

## **Loopholes in Panchayati Raj System**

### **An Evolutionary Perspective**

Panchayati Raj is a system of governance in which Gram panchayats are the basic units of administration. Modern Indian government has decentralized several administrative functions to the local level, empowering elected gram panchayats. Panchayat Raj is a system of governance in which gram panchayats are the basic units of administration. It has 3 levels: Gram (village, though it can comprise more than one village), Janpad (block) and Zilla (district). It also found backing in the Constitution, with the 73rd amendment in 1992 to accommodate the idea. The Amendment Act of 1992 contains provision for devolution of powers and responsibilities to the panchayats both for the preparation of economic development plans and social justice, as well as for implementation in relation to 29 subjects listed in the eleventh schedule of the constitution.

The spirit and importance of Panchayati Raj system found place in Article 40 of the Directive Principles of State Policy of the Constitution of India, which says: "***The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.***"

After independence, the process of empowering Panchayats gathered momentum. Mahatma Gandhi advocated *Panchayati Raj*, a decentralized form of Government where each village is responsible for its own affairs, as the foundation of India's political system. The term for such a vision was Gram Swaraj (village self-governance). Mahatma Gandhi, the father of the nation, emphasizing on 'Gram Swaraj' (village autonomy) strongly advocated that: "***Independence must begin at the bottom. Thus every village will be a republic of panchayat having full power.***"

Pandit Jawaharlal Nehru the first Prime Minister of India, considered panchayats as an important socio-economic and political institution at the village level. While inaugurating the Panchayati Raj in Rajasthan in 1959, he underlined the importance of people taking responsibilities:

***"to uplift millions of villages is not an ordinary task, the reason for the slow progress is our dependence on official machinery. An officer is probably necessary because he is an expert. But this can be done only if the people take up the responsibility in their own hands. The people are not merely to be consulted, but effective power has to be entrusted to them."***

Former Prime Minister Rajiv Gandhi, while emphasizing on the significance of panchayats had remarked:

***"We must put an end to planning from above. We must put an end to priorities being conceived and decided at ethereal heights, far from the ground realities."***

The First Five Year Plan also recognized the need for disaggregated planning through a process of democratic decentralization incorporating the idea of a village plan and a district development council. The Government of India constituted several committees at different points of time to strengthen the local self-government institutions. The first one was the Balwantrai Mehta Committee constituted in 1957. The committee recommended the urgency of democratic and elected institutions at the lowest level and suggested a three-tier system at the district, intermediate and village levels. The recommendations of the committee were approved by NDC in January 1958 and this set the stage for the launching of Panchayati Raj Institutions throughout the country. The committee recommended the establishment of the scheme of 'democratic decentralisation' which finally came to be known as Panchayati Raj. (i) Establishment of a 3-tier Panchayati Raj system - Gram Panchayat at the village level, Panchayat Samiti at the block level, and Zila Parishad at the district level. This system was adopted by state governments during the 1950s and 60s, as laws were passed to establish panchayats in various states.

K Santham Committee constituted in 1959, in its report in 1965, recommended setting up of a Panchayati Raj Finance Corporation and district election commissions. Ashok Mehta Committee (1977) recommended a two-tier set-up at district and village level. The Sarkaria Commission on Centre-State relations appointed in 1983 recommended in its report that the objectives of decentralized planning cannot be achieved unless the Panchayati Raj and other local bodies are allowed to perform their assigned role. Taking into consideration all these recommendations and success of West Bengal, Karnataka and Andhra Pradesh experiment and the prevailing mood for decentralization, Prime Minister Rajiv

Gandhi introduced the 64<sup>th</sup> Constitutional Amendment Bill in 1989, which was passed by the Lok Sabha, but failed to get the concurrences of the Rajya Sabha.

Later, a cabinet committee was constituted to look into the contents of the Panchayati Raj Bill of 1989 afresh and a comprehensive amendment was introduced in the form of the Constitution 73<sup>rd</sup> Amendment Bill in 1992 during the Prime Ministership of P V Narasimha Rao, which was passed by both the Houses of Parliament and came into effect on April 24, 1993. In the history of Panchayati Raj in India, on 24 April 1993, the 73<sup>rd</sup> Constitutional Amendment Act 1992 came into force to provide constitutional status to the Panchayati Raj institutions. This act was extended to Panchayats in the tribal areas of eight states, namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Odisha and Rajasthan starting 24 December 1996. Currently, the Panchayati Raj system exists in all the states except Nagaland, Meghalaya and Mizoram, and in all Union Territories except Delhi.

### **Reservation for women in PRIs in India**

The Union Cabinet of the Government of India, on 27 August 2009, approved 50% reservation for women in PRIs (Panchayati Raj Institutions). The Indian states which have already implemented 50% reservation for women in PRIs are Madhya Pradesh, Bihar, Uttarakhand and Himachal Pradesh. As of 25 November 2011, the states of Andhra Pradesh, Chhatisgarh, Jharkhand, Kerala, Maharashtra, Orissa, Rajasthan and Tripura also reserve 50% of their posts for women.

### **The 73<sup>rd</sup> Amendment Act**

The 73rd amendment of the Constitution is an epoch making event in the history of democratic decentralization in India. The Act aims to provide a 3-tier system of Panchayati Raj for all States having a population of over 2 million, to hold Panchayat elections regularly every 5 years, to provide seats reservations for scheduled castes, scheduled tribes and women; to appoint a State Finance Commission to make recommendations as regards to the financial powers of the Panchayats and to constitute a District Planning Committee to prepare a development plan draft for the district. The 3-tier system of Panchayati Raj consists:

1. Village-level Panchayats
2. Block-level Panchayats

### 3. District-level Panchayats.

Powers and responsibilities are delegated to panchayats at the appropriate level:

- Preparation of the economic development plan and social justice plan.
- Implementation of schemes for economic development and social justice in relation to 29 subjects given in the Eleventh Schedule of the Constitution.
- To levy and collect appropriate taxes, duties, tolls and fees.

The main features of the 73<sup>rd</sup> Constitutional Amendment are presented in table 1.

**Table 1: Key Features of 73<sup>rd</sup> Constitutional Amendment**

S. No	Key Features	Provision in the Act
1	Three Tier Structure	Article 243-B, Gram Panchayat at Village level, Intermediate Panchayat at Block Level and District Panchayat at the District Level
2	Elections at every five years	Article 243-E, every Panchayat shall continue for five years from the date appointed for its first meeting and no longer.
3	Reservation of seats for Scheduled Castes and Scheduled Tribes	Article 243-D, reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of panchayats.
4	Reservation of seats for women	Article 243-D (3), provides that not less than one third (including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled up by direct election in every panchayat shall be allotted by rotation to different constituencies in a panchayat.
5	Establishment of State finance Commissions	Article 243-I provides for constitution of State Finance Commission to review financial position of the Panchyat Raj

	Institutions (PRIs) and to make recommendations to the Governor and distribution between the state and the PRIs of the net proceeds of the taxes, duties, tolls and fees leviable by the state.
6 Establishment of State Election Commission	Article 243-K, provides for the establishment of State Election Commission. The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the panchayats shall be vested in the State Election Commission.
7 Establishment of District Planning Committee (DPCs)	Article 243ZD provides for the constitution of DPCs to consolidate the development plans prepared by the gram panchayat.
8 29 duties and responsibilities	Article 243 (G), made addition of Eleventh Schedule and assigning duties and responsibilities on 29 subjects.
9 Establishment of Gram Sabha	Article 243, provides for Gram Sabha to exercise such powers and perform such functions at the village level as the legislature of a State may by law provides.

In conformity with the Constitutional Amendment all the states have amended their state Acts or passed new acts repealing the then existing ones. Today the PRIs are the bedrock of effective implementation of India's rural development and poverty alleviation programmes. It is true that, if effectively empowered, the PRIs have the potential to build a progressive India (which truly lives in its villages) in harmony with the felt needs and aspirations of the people. The panchayats receive funds from three sources:<sup>[2]</sup>

1. Local body grants, as recommended by the Central Finance Commission
2. Funds for implementation of centrally sponsored schemes

### 3. Funds released by the state governments on the recommendations of the State Finance Commissions

#### **Loopholes**

Independent India's local government system was to be rooted in Mahatma Gandhi's philosophy of Gram Swaraj, making the village a complete republic-independent of its neighbors for its own vital wants and yet interdependent for many others, based on mutual cooperation. Though India has had a unbroken history of village panchayats and caste panchayats, they were not true democratic bodies as privileges attached to caste, landholding and other factors prevented them from functioning as the forum of common people. Women and Dalit's had no voice at all. This was one of the main reasons for the comparatively static life in rural India. In a radical departure from the past, the Panchayati Raj or village self-rule envisaged by Mahatma Gandhi was both a means as also an end. He believed in panchayats' immense potential for democratic decentralisation and for devolving power to the people. Despite the fact that villages of India have had a long history of the panchayats being the basic unit of administration and the nationalist movement's clear commitment to panchayats as the primary unit of administration, the first draft of India's Constitution did not include a provision for establishing panchayats in the free republican India. But because of the efforts of Gandhian scholars and followers in the Constituent Assembly, the provision (Article 40) relating to village panchayats in part IV of the Constitution (Directive Principles of State Policy) was included. Instead of establishing Panchayats as vehicle for economic development and social justice in rural areas, Community Development Programme in 1952 and National Extension Services in 1957 were launched which could not evoke people's participation in rural development as these programmes were bureaucratic in orientation. To enquire into the causes and apathy of the rural population towards these programmes and to suggest some corrective measures, a committee was constituted under the chairmanship of Shri Balwantrai Mehta. The committee submitted its report on the 24<sup>th</sup> of November 1957. This committee in fact laid the foundation stone of the Panchayati Raj in India. But the interest and support for Panchayati Raj did not last long. The apathy towards Panchayats remained. Flow of funds for block development started declining. In many states

elections to these bodies were postponed indefinitely. After two decades in 1978 Asoka Mehta Committee, after evaluating the progress of the Panchayats, had recommended Constitutional status to the Panchayats, participation of political parties in Panchayat elections, adoption of a two-tier system at District and Mandal levels and establishing a finance body like Panchayati Raj Finance Corporation for providing credit to the Panchayats. In 1986 the L. M. Singhvi Committee, among others, also recommended constitutional status to the Panchayats. It is against this background that the 73<sup>rd</sup> Amendment (1992) to the Constitution was made. The 73<sup>rd</sup> amendment certainly marked the beginning of a new era in the annals of Panchayati Raj in India. The Institutional mechanism of Panchayati Raj has now got a new thrust and dynamism and certainly is a great improvement over the earlier system in several ways. First, the state governments are under a constitutional obligation to implement the new system envisaged under the amendment. Secondly, reservation for women, scheduled castes, scheduled tribes and other backward classes have significantly altered the power scenario. Thirdly, provisions for conducting free and fair elections with the help of state level Election Commission and Finance Commission to devolve greater resources to these bodies are a great landmark in the history of Panchayati Raj. But the question here is whether the people in the rural areas, who are going to manage the institutions, have been truly involved so far in connection with the implementation of new system? Several years have been lapsed since the beginning of the New Panchayati Raj system in India after the enactment of the 73<sup>rd</sup> Amendment to the Constitution. During this period assessment of the working of the panchayats shows that Panchayats have not entirely fulfilled the people's aspirations in terms of becoming participators in decision making, in decentralised governance, planning and development. Instead of establishing Panchayat, participation of the poor in local governance has not entirely been ensured by way of reserving seats for them in the Panchayats. Vital issues affecting local government have been either in the domain of the state government or central government.

Dr. George Mathew identifies some crucial issues, which pose problems for panchayats to become 'institutions of self-government'

(i) In the State Panchayat and Municipal Acts after 1992, one finds that the states have accepted the letter of the 73<sup>rd</sup> or 74<sup>th</sup> Amendments rather than their spirit. In many State Acts, civil servants are indirectly given powers over the elected body. Transfer of activities and functions to panchayats is taking place very slowly.

(ii) Although all the states have passed conformity Acts, many of them are yet to formulate rules and byelaws for the day-to-day functioning of panchayats. Added to this, the necessary infrastructural facilities are lacking for panchayats in many states. Many a panchayat does not have even Panchayat Gharas yet.

(iii) The paucity of panchayat personnel is also hampering panchayats' functioning particularly budget making. In many states one Secretary is in charge of two or three Panchayats.

(iv) The reluctance of state-level politicians to recognize the importance of the lower level of governance – their autonomy their powers and their areas of functioning – is creating problems in devolving powers. Ministers, MLAs and senior political leaders are worried that the power they enjoyed so far will diminish if panchayats and municipalities become really powerful. **State-level leaders do not like local level leadership to emerge, which could pose-challenges to them in due course.** MLAs put hurdles in the smooth functioning of Panchayats to prevent them from blossoming into full-fledged local governments.

(v) Government officials and government employees prefer to work with a distant control mechanism i.e., the state capital. They do not want to be closely supervised under Panchayati Raj. Therefore, their non-cooperative attitude towards elected panchayat members is a major issue. A related issue is that the officials who work at the district level and below are found to be reluctant to take orders from the elected panchayat executives like the District Panchayat President, Block Samiti President or Village Panchayat President.

(vi) A low level of political consciousness in many parts of the country is another factor, which is pulling the new Panchayati Raj backwards. The

states of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Orissa have a low Panchayati Raj performance rating. Madhya Pradesh was the first state to hold elections to panchayats after the 73<sup>rd</sup> Constitutional Amendment and elected local bodies came into existence. But soon reports began to appear in newspapers that all was not well with their functioning. A chain of events was reported 161 from different parts of the state: A lady president was stripped naked, another lady was gang-raped, a lower caste vice-president was tortured and a Scheduled caste panchayat member was beaten up.

(vii) In many places panchayats themselves are working as oppressive instruments. Absence of land reforms, low levels of literacy, livelihood, awareness, especially among women, patriarchal system, etc. work against weaker sections in the villages. A majority of people suffering from the effects of traditional oppressive power structures is unable to utilize effectively the new opportunities provided through panchayats.

**Caste Violence can be seen during the panchayats elections.** All most all states have facing caste violence during the panchayat election and post-election. There are so many examples, just as last year, the southern districts of Tamil Nadu have been rocked by caste related clashes in which six persons were shot dead by the police while 14 more were killed during the clashes...The main reason behind these clashes was the planned effort of oppressive castes to throw out Dalits from their settlements. It is a sorry state of affairs that even the political and the state power stood beside the oppressive castes. Following this what happened at Melavalavu village on June 30, 1997 was the epitome of intolerance by high caste people. On that day just because the Dalits stood for elections to the village panchayat (Melavalavu being a reserved Constituency), the high caste people of the village brutally murdered six persons, including the president and vice president of the panchayat in broad daylight. They severed the head of the panchayat president and threw it inside a well. The post of panchayat president in this village was reserved for the Dalits. The high caste people, unable to face this encroachment on what they had traditionally considered their domain, protested against it and threatened the Dalits with reprisal if they contested for the post. They burnt even their houses. It may be noted here that women representatives in the

local bodies have not been treated with the dignity they deserve. In many instances, they are used as proxy members conduct meetings in panchayats and wield the real power. Also, the women elected members face violence if they dare to come out alone to attend meetings or show dissent.

Working conditions in the panchayats are not congenial. Besides these handicaps, the general atmosphere of the politics has been vitiated with corruption, violence and petty-mindedness. A great deal of money is involved in contesting elections. All these factors affect the choice of deserving candidates among women and also their efficiency after they are returned. Atrocities against women representatives take place in several states. Newly elected Sarpanches of 38 gram panchayats in Bassi block of Jaipur district have unanimously passed a resolution condemning and deciding to boycott the saathins (Women community workers for social change), who in Rajasthan had been working especially to bring about an end to the wide spread system of child-marriage in the state. Incidentally, it was in a village in this same Bassi block that a saathin, Bhanwari Devi, was gang-raped by local goons, because she tried to prevent the marriage of a child. Beside this there are several other cases which reveal the gender inequality in Indian society. Mishri Devi, a ST Sarpanch, was stripped naked while unfurling the national flag on 15<sup>th</sup> August, 1998 at Thikarai village in Dausa district of Popara panchayat in Tilkarai district of Rajasthan. Gundia Bai, a Dalit Sarpanch of Pipara Panchayat in Tikamgarh district of Madhya Pradesh was prevented by her male up-sarpanch even from touching the national flag.

Another ugly development is the numerous no-confidence motions being brought against female Sarpanches. If a no-confidence motion is passed against a chairperson or deputy chairperson by a two-thirds majority, he/she has to resign. This is how male deputy chairpersons in Panchayati Raj Institutions oust unwanted women office bearers and effect a takeover until fresh elections are held...Some sections of the politically and economically dominant caste groups, which had to cede Panchayat power to OBC/Dalit woman used no-confidence motion to return to the positions of power to protect their vested interests. The reports of auctioning of panchayats in the newspapers can be seen, which is a blow to the direct democracy and free

and fair elections. Even while the leaders of the various political parties in Tamil Nadu are busy firming up alliances for the coming elections to rural and urban bodies., there are reports from several villages that the village 'elders' are engaged in finding a consensus among themselves to nominate presidents and members to the local bodies. The reports talk about auctions being held in villages and men (or women) who bid the highest amount are being 'appointed' to the posts. Apart from the fact that such a method is inimical to the spirit of the Constitution (elected panchayats being a mandatory requirement after the 73<sup>rd</sup> and the 74<sup>th</sup> Constitution Amendments), the fact that it is taking place more specifically in those village panchayats reserved for the Scheduled Castes is clearly a move against the empowerment of Dalits and all those ideas linked to achieving social justice.

There is a whole contradiction in the precept and the practice. The panchayats are totally dependent on the centre or state governments for their subsistence. Their autonomy is simply meaningless and empty. Election to the Panchayats is manipulated by clever feudal or caste elites. The villager has no power to recall or re-elect a Panchayat. There is no process of referendum on any important issue. The village body as a whole cannot take any decision freely. Thus, the very institutions of direct democracy are missing. The illiteracy and poverty of the people prevents their coming out boldly against foul practices. Despite teething troubles, several developments point to a situation of poise and optimism. Non-Governmental Organisations, Community initiatives and people's organisations are playing an important role in strengthening the Panchayats and municipalities. . A large number of NGOs are playing an important role in treating, enabling conditions for the success of the panchayats through awareness-building programmes about their rights and duties to serve the people, training of elected members, especially women, ensuring their active participation in elections, and assisting panchayats in planning and implementation of social development strategies and programmes.

Local bodies in India with their Constitutional legitimacy and interaction with citizens' groups and voluntary organisations present an ideal meeting point between the state and the civil society. The new Panchayati Raj is opening up possibilities for a better flow of information. Information is power and the

dominant classes kept the ordinary people in the dark. Transparency in public dealing was missing because everything official was secret and confidential. When democracy is in the hands of ordinary citizens, it can conquer poverty, ensure economic growth with equity, sustain healthy environment and work for human rights. Unfortunately, forces against devolution of democracy to the grassroots are still powerful. One can discern deliberate attempts in the part of vested interests supporting the status quo to create scepticism about the working of the local governments. The dream of Mahatma Gandhi's 'Gram Swaraj' could be converted into reality only when the little republics worked for equality and the prosperity of the people through great dedication.

Most States have held at least one round of elections since 1993. Reservations allowing the participation of women, Scheduled Castes and Scheduled Tribes have been respected (although there is great scope for corruption). Finally, voter participation has been high. In its study of 53 villages in Rajasthan and MP, for instance, the World Bank (Alsop et al., 2000) found that voter turn out in Panchayat elections was well over 90% for all categories (defined in terms of gender, class and caste). This is significantly higher than the (still high) turnout for the most recent (1998) round of Lok Sabha elections, which was 61% for women and 65.9% for men (Yadav, 1999).<sup>7</sup>

The World Bank study goes on to argue that although Indian States and the Union government have been willing to recognize the Panchayats, to hold elections and to respect stipulations governing reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and women, they have been unwilling to vest them with sufficient 'administrative control over significant functions or fiscal autonomy,' (World Bank, 2000a: xi). In most States, Panchayats have been handed a wide array of responsibilities without the necessary fiscal and administrative resources. .

Oommen (1999) compared the Conformity Acts of 12 Indian States and concluded that these acts had generally been an exercise in amending existing Panchayat legislation for the sake of satisfying the mandatory provisions of the 73<sup>rd</sup> Amendment.' He made the following observations:

- village Panchayats have delegated functions without adequate administrative, financial and technical support,

- Except the Panchayats in Kerala and West Bengal states, Panchayats of other states lack discretionary powers over spending and staff;
- there is insufficient clarity and differentiation of functions among Panchayats and other levels of government;
- States reserve the right to assign or withdraw functions to and from the Panchayats by ‘executive fiat’;
- Panchayats at all levels have inadequate powers of taxation;
- Panchayats lack autonomous budgeting powers.

Similarly, Vyasulu (2000) finds that State governments have devolved little finances and fiscal powers to the Panchayats. Instead, many have established ‘parallel bodies’ as a channel for development funding. Self-help groups (SHGs) connected to the Janmabhoomi programme in Andhra Pradesh and the Rajiv Gandhi Watershed ‘Missions’ in Madhya Pradesh are two illustrations of this trend.

The 73<sup>rd</sup> Amendment contains a number of provisions that aim to counter balance patterns of inequality and discrimination in rural India. Principal among these are the stipulations that:

- one-third of all seats must be reserved for women;
- there must be reservations for SCs and STs proportional to their population; such reservations must apply to Sarpanches;
- the Gram Sabha has constitutional status as a formal deliberative body;
- individual States may enact further provisions creating reservation status for other backward groups.

In theory, reservations and the Gram Sabha provide an important means of ensuring that marginal groups are incorporated into local politics and that representatives act in a way that is consistent with their formal responsibilities and the plural interests of their constituents. In practice, however, neither appears to

have lived up to this (rather lofty) ideal. Studies of decentralisation have consistently highlighted the fact that the 73<sup>rd</sup> Amendment and earlier attempts at decentralization have failed to prevent a local (and primarily landed) élite from controlling local Panchayats.

Micro-level studies have shown that Gram Sabha often fail to fulfil their role as deliberative bodies or as a mechanism for accountability (Alsop et al., 2000; Deshpande and Murthy, 2002; Nambiar, 2001). This is partly attributed to low levels of participation among the electorate as well as the non-cooperation of local officials. Examples of the latter include officials delaying or postponing Gram Sabha meetings, officials not attending Gram Sabha, and, more generally, official decisions having no bearing on decisions reached during the Gram Sabha (Crook and Manor, 1998: Chapter 2; Deshpande and Murthy, 2002; Nambiar, 2001).

Explanations for poor participation in the Gram Sabha include (e.g. Alsop et al., 2000; Nambiar, 2001):

- limited benefits of participation;
- opportunity costs, particularly on the part of very poor groups;
- fear of disrupting existing patron-client relations;
- corruption;
- agenda fixing;
- factionalism;
- fear of exclusion from community.

The World Bank's study of 53 villages in Rajasthan and Madhya Pradesh (Alsop et al., 2000) found that gender and education were important determinants of political participation, measured in terms of campaigning, attending rallies, supporting a candidate, influencing voters, contacting a public representative, and attending Gram Sabhas. Interestingly, wealth – measured in terms of land holdings – was not a strong determinant of public participation (see below). Along similar lines, Deshpande and Murthy's study of Panchayati Raj in Karnataka (2002) found that

levels of participation were ‘considerably low’, particularly among women. Similar conclusions have emerged from field studies in West Bengal (Ghatak and Ghatak, 2002), Rajasthan and Haryana (Nambiar, 2001).

Even when there are reservations to ensure that marginal groups have a place in the Panchayat system, there is evidence to suggest that these formal institutions have been usurped by more informal patterns of domination and power. Reservations for women, for instance, are notoriously prone to corruption by male relatives, excluded from formal participation by their lack of scheduled status (Vyasulu and Vyasulu, 1999). Similar patterns have been observed among SCs and STs, whose economic wellbeing is dependent on the patronage of local élites.

### **1. Lack of coordination between the rural PRIs and urban local bodies:**

At present, there is lack of coordination between the PRIs and the Urban local bodies. Article 243 ZD of the Constitution provides that the municipal bodies are expected to coordinate and work in tandem with other institutions of self-government. The chairman of the zilaparishad is the chairman of the district planning committee and the mayor of the municipal corporation and president of the municipal councils in the district are members of this constitutional body.

### **2. Weak social auditing:**

Technically the panchayats do not have adequate expertise, manpower, and skill to plan and implement development schemes and projects. Thereby they are increasing their dependence on the state apparatus (Dhaka, 2002). This puts them on the defensive while facing social auditing by the community.

### **3. Politicization of PRIs:**

Many sarpanches contest elections under the patronage of national and regional political parties, as it facilitates their political advancement. This has promoted the use of money and muscle power and even communal clashes have taken place in panchayat elections.

Politicization of the panchayats is also responsible for the dismal functioning of gram sabhas.

#### **4. Centralization of power in the hands of sarpanches:**

Centralization of power in the hands of sarpanches dilutes the objective of deconcentration of power. Citing the case of West Bengal, Ghatak and Ghatak (2002) remarked 'the power of the village council is totally concentrated in the hands of pradhans (Presidents), for all practical purposes, and the pradhan is a powerful man'. During training programme of representatives of the PRIs in Punjab, many panches complained that the sarpanches did not take them into confidence while performing the functions of gram panchayats such as spending government grants, selecting the beneficiaries of welfare schemes and implementation of development programmes.

#### **5. Growth of parallel bodies:**

The parallel bodies taking away functions of PRIs is a growing concern. Water user groups, joint forest management committees and expert committees are a few examples of the working of parallel institutions in different states. A parliamentary standing committee commented that these parallel bodies were undermining the decision-making powers of the gram sabhas and the gram panchayats. Even the youth clubs, mahilamandals and other village level organizations, that get direct grants from the government were undermining the role assigned to the PRIs by the constitution.

However, the impetus gained momentum with the statutory recognition of local bodies as institutions of rural and urban self-government after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments in 1993. Although this was not done as a component of structural reform, the attempt at decentralisation coincided with other market-oriented reform efforts.

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## **Block panchayat**

A block panchayat (*panchayat samiti*) is a local government body at the tehsil or taluka level in India. This body works for the villages of the tehsil or taluka that together are called a Development Block. The panchayat samiti is the link between the gram panchayat and the district administration. There are a number of variations of this institution in different states. It is known as Mandal Praja Parishad in Andhra Pradesh, Taluka panchayat in Gujarat, Mandal Panchayat in Karnataka, Panchayat Samiti in Maharashtra etc. In general, the block panchayat is a form of the Panchayati raj but at a higher level.

## **Constitution**

The constitution is composed of ex-official members (all sarpanchas of the panchayat samiti area, the MPs and MLAs of the area and the SDO of the subdivision), co-opt members (representatives of SC/ST and women), associate members (a farmer of the area, a representative of the cooperative societies and one of the marketing services), and some elected members.

The samiti is elected for 5 years and is headed by the Chairman and the Deputy Chairman.

## **Departments**

The common departments in the Samiti are as follows:

1. General administration
2. Finance
3. Public work
4. Agriculture
5. Health
6. Education
7. Social welfare
8. Information technology, and others.

There is an officer for every department. A government appointed Block Development Officer (BDO) is the executive officer to the Samiti and the chief of its administration.

## **Functions**

1. Implementation schemes for the development of agriculture.
2. Establishment of primary health centres and primary schools.
3. Supply of drinking water, drainage, and construction/repair of roads.
4. Development of cottage and small-scale industries, and the opening of cooperative societies.
5. Establishment of youth organisations.

## **Sources of income**

The main source of income of the panchayat samiti are grants-in-aid and loans from the State Government.

## **District level panchayat**

The governing system at district level in Panchayat Raj is also popularly known as "Zila Parishad". Chief of administration is an officer from IAS cadre.

Functions:

1. Provide essential services and facilities to the rural population
2. Supply improved seeds to farmers. Inform them of new farming techniques
3. Set up and run schools and libraries in the rural areas
4. Start Primary Health Centers and hospitals in villages. Start vaccination drives against epidemics
5. Execute plans for the development of the scheduled castes and tribes. Run ashramshalas for adivasi children. Set up free hostels for them
6. Encourage entrepreneurs to start small-scale industries and implement rural employment schemes
7. Construct bridges, roads & other public facilities and their maintenance
8. Provide employment

#### Sources of Income:

1. Taxes on water, pilgrimage, markets, etc.
2. Fixed grant from the State Government in proportion with the land revenue and money for works and schemes assigned to the Parishad.

In conformity with the Constitutional Amendment all the states have amended their state Acts or passed new acts repealing the then existing ones. Today the PRIs are the bedrock of effective implementation of India's rural development and poverty alleviation programmes. It is true that, if effectively empowered, the PRIs have the potential to build a progressive India (which truly lives in its villages) in harmony with the felt needs and aspirations of the people.

#### **Loopholes in Panchyati Raj System**

Independent India's local government system was to be rooted in Mahatma Gandhi's philosophy of Gram Swaraj, making the village a complete republic-independent of its neighbors for its own vital wants and yet interdependent for many others, based on mutual cooperation. Though India has had a unbroken history of village panchayats and caste panchayats, they were not true democratic bodies as privileges attached to caste, landholding and other factors prevented them from functioning as the forum of common people. Women and Dalits had no voice at all. This was one of the main reasons for the comparatively static life in rural India. In a radical departure from the past, the Panchayati Raj or village self-rule envisaged by Mahatma Gandhi was both a means as also an end. He believed in panchayats' immense potential for democratic decentralisation and for

devolving power to the people. Despite the fact that villages of India have had a long history of the panchayats being the basic unit of administration and the nationalist movement's clear commitment to panchayats as the primary unit of administration, the first draft of India's Constitution did not include a provision for establishing panchayats in the free republican India. But because of the efforts of Gandhian scholars and followers in the Constituent Assembly, the provision (Article 40) relating to village panchayats in part IV of the Constitution (Directive Principles of State Policy) was included. Instead of establishing Panchayats as vehicle for economic development and social justice in rural areas, Community Development Programme in 1952 and National Extension Services in 1957 were launched which could not evoke people's participation in rural development as these programmes were bureaucratic in orientation. To enquire into the causes and apathy of the rural population towards these programmes and to suggest some corrective measures, a committee was constituted under the chairmanship of Shri Balwantrai Mehta. The committee submitted its report on the 24<sup>th</sup> of November 1957. This committee in fact laid the foundation stone of the Panchayati Raj in India. But the interest and support for Panchayati Raj did not last long. The apathy towards Panchayats remained. Flow of funds for block development started declining. In many states elections to these bodies were postponed indefinitely. After two decades in 1978 Asoka Mehta Committee, after evaluating the progress of the Panchayats, had recommended Constitutional status to the Panchayats, participation of political parties in Panchayat elections, adoption of a two-tier system at District and Mandal levels and establishing a finance body like Panchayati Raj Finance Corporation for providing credit to the Panchayats. In 1986 the L. M. Singhvi Committee, among others, also recommended constitutional status to the Panchayats. It is against this background that the 73<sup>rd</sup> Amendment (1992) to the Constitution was made. The 73<sup>rd</sup> amendment certainly marked the beginning of a new era in the annals of Panchayati Raj in India. The Institutional mechanism of Panchayati Raj has now got a new thrust and dynamism and certainly is a great improvement over the earlier system in several ways. First, the state governments are under a constitutional obligation to implement the new system envisaged under the amendment. Secondly, reservation for women, scheduled castes, scheduled tribes and other backward classes have significantly altered the power

scenario. Thirdly, provisions for conducting free and fair elections with the help of state level Election Commission and Finance Commission to devolve greater resources to these bodies are a great landmark in the history of Panchayati Raj. But the question here is whether the people in the rural areas, who are going to manage the institutions, have been truly involved so far in connection with the implementation of new system? Several years have been lapsed since the beginning of the New Panchayati Raj system in India after the enactment of the 73<sup>rd</sup> Amendment to the Constitution. During this period assessment of the working of the panchayats shows that Panchayats have not entirely fulfilled the people's aspirations in terms of becoming participators in decision making, in decentralised governance, planning and development. Instead of establishing Panchayat, participation of the poor in local governance has not entirely been ensured by way of reserving seats for them in the Panchayats. Vital issues affecting local government have been either in the domain of the state government or central government.

Dr. George Mathew identifies some crucial issues, which pose problems for panchayats to become 'institutions of self-government'

(a) In the State Panchayat and Municipal Acts after 1992, one finds that the states have accepted the letter of the 73<sup>rd</sup> or 74<sup>th</sup> Amendments rather than their spirit. In many State Acts, civil servants are indirectly given powers over the elected body. Transfer of activities and functions to panchayats is taking place very slowly.

(b) Although all the states have passed conformity Acts, many of them are yet to formulate rules and byelaws for the day-to-day functioning of panchayats. Added to this, the necessary infrastructural facilities are lacking for panchayats in many states. Many a panchayat does not have even Panchayat Gharas yet.

(c) The paucity of panchayat personnel is also hampering panchayats' functioning particularly budget making. In many states one Secretary is in charge of two or three Panchayats.

(d) The reluctance of state-level politicians to recognize the importance of the lower level of governance – their autonomy their powers and their areas of functioning – is creating problems in devolving powers. Ministers, MLAs and senior political leaders are worried that the power they enjoyed so far will diminish if panchayats and municipalities become really powerful. **State-level leaders do not like local level leadership to emerge, which could pose-challenges to them in due course.** MLAs put hurdles in the smooth functioning of Panchayats to prevent them from blossoming into full-fledged local governments.

(e) Government officials and government employees prefer to work with a distant control mechanism i.e., the state capital. They do not want to be closely supervised under Panchayati Raj. Therefore, their non-cooperative attitude towards elected panchayat members is a major issue. A related issue is that the officials who work at the district level and below are found to be reluctant to take orders from the elected panchayat executives like the District Panchayat President, Block Samiti President or Village Panchayat President.

(f) A low level of political consciousness in many parts of the country is another factor, which is pulling the new Panchayati Raj backwards. The states of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Orissa have a low Panchayati Raj performance rating. Madhya Pradesh was the first state to hold elections to panchayats after the 73<sup>rd</sup> Constitutional Amendment and elected local bodies came into existence. But soon reports began to appear in newspapers that all was not well with their functioning. A chain of events was reported 161 from different parts of the state: A lady president was stripped naked, another lady was gang-raped, a lower caste vice-president was tortured and a Scheduled caste panchayat member was beaten up.

(g) In many places panchayats themselves are working as oppressive instruments. Absence of land reforms, low levels of literacy, especially among women, patriarchal system, etc. work against weaker sections in the villages. A majority of people suffering from the effects of traditional oppressive power structures is unable to utilize effectively the new opportunities provided through panchayats. **Caste Violence can be seen during**

**the panchayats elections.** “For the past two months the southern districts of Tamil Nadu have been rocked by caste related clashes in which six persons were shot dead by the police while 14 more were killed during the clashes...The main reason behind these clashes was the planned effort of oppressive castes to throw out Dalits from their settlements. It is a sorry state of affairs that even the political and the state power stood beside the oppressive castes. Following this what happened at Melavalavu village on June 30, 1997 was the epitome of intolerance by high caste people. On that day just because the Dalits stood for elections to the village panchayat (Melavalavu being a reserved Constituency), the high caste people of the village brutally murdered six persons, including the president and vice president of the panchayat in broad daylight. They severed the head of the panchayat president and threw it inside a well. The post of panchayat president in this village was reserved for the Dalits during the recent panchayat elections. The high caste people, unable to face this encroachment on what they had traditionally considered their domain, protested against it and threatened the Dalits with reprisal if they contested for the post. They burnt even their houses.” It may be noted here that women representatives in the local bodies have not been treated with the dignity they deserve. In many instances, they are used as proxy members conduct meetings in panchayats and wield the real power. Also, the women elected members face violence if they dare to come out alone to attend meetings or show dissent. Working conditions in the panchayats are not congenial. Besides these handicaps, the general atmosphere of the politics has been vitiated with corruption, violence and petty-mindedness. A great deal of money is involved in contesting elections. All these factors affect the choice of deserving candidates among women and also their efficiency after they are returned. Atrocities against women representatives take place in several states. “Newly elected sarpanches of 38 gram panchayats in Bassi block of Jaipur district have unanimously passed a resolution condemning and deciding to boycott the saathins (Women community workers for social change), who in Rajasthan had been working especially to bring about an end to the wide spread system of child-marriage in the state. Incidentally, it was in a village in this same Bassi block that a saathin, Bhanwari Devi, was gang-raped by local goons, because she tried to prevent the marriage of a child. Beside this there are several other cases which reveal the gender inequality

in Indian society. Mishri Devi, a ST Sarpanch, was stripped naked while unfluring the national flag on 15<sup>th</sup> August, 1998 at Thikarai village in Dausa district of Popara panchayat in Tilkarai district of Rajasthan. Gundia Bai, a Dalit Sarpanch of Pipara Panchayat in Tikamgarh district of Madhya Pradesh was prevented by her male up-sarpanch even from touching the national flag. “Another ugly development is the numerous no-confidence motions being brought against female Sarpanches. If a no-confidence motion is passed against a chairperson or deputy chairperson by a two-thirds majority, he/she has to resign. This is how male deputy chairpersons in Panchayati Raj Institutions oust unwanted women office bearers and effect a takeover until fresh elections are held...Some sections of the politically and economically dominant caste groups, which had to cede Panchayat power to OBC/Dalit woman used no-confidence motion to return to the positions of power to protect their vested interests.” The reports of auctioning of panchayats in the newspapers can be seen, which is blow to the direct democracy and free and fair elections. “Even while the leaders of the various political parties in Tamil Nadu are busy firming up alliances for the coming elections to rural and urban bodies., there are reports from several villages that the village “elders”are engaged in finding a consensus among themselves to nominate presidents and members to the local bodies. The reports talk about auctions being held in villages and men (or women) who bid the highest amount are being “appointed” to the posts. Apart from the fact that such a method is inimical to the spirit of the constitution (elected panchayats being a mandatory requirement after the 73<sup>rd</sup> and the 74<sup>th</sup> Constitution Amendments), the fact that it is taking place more specifically in those village panchayats reserved for the Scheduled Castes is clearly a move against the empowerment of Dalits and all those ideas linked to achieving social justice.” There is a whole contradiction in the precept and the practice. The panchayats are totally dependent on the centre or state governments for their subsistence. Their autonomy is simply meaningless and empty. Election to the Panchayats is manipulated by clever feudal or caste elites. The villager has no power to recall or reelect a Panchayat. There is no process of referendum on any important issue. The village body as a whole cannot take any decision freely. Thus, the very institutions of direct democracy are missing. The illiteracy and poverty of the people prevents their coming out boldly against

foul practices. Despite teething troubles, several developments point to a situation of poise and optimism. Non-Governmental Organisations, Community initiatives and people's organisations are playing an important role in strengthening The Panchayats and municipalities. . A large number of NGOs are playing an important role in treating, enabling conditions for the success of the panchayats through awareness-building programmes, training of elected members, especially women, ensuring their active participation in elections, and assisting panchayats in planning and implementation of social development strategies and programmes. Local bodies in India with their Constitutional legitimacy and interaction with citizens' groups and voluntary organisations present an ideal meeting point between the state and the civil society. The new Panchayati Raj is opening up possibilities for a better flow of information. Information is power and the dominant classes kept the ordinary people in the dark. Transparency in public dealing was missing because everything official was secret and confidential. "When democracy is in the hands of ordinary citizens, it can conquer poverty, ensure economic growth with equity, sustain healthy environment and work for human rights. Unfortunately forces against devolution of democracy to the grassroots are still powerful. One can discern deliberate attempts in the part of vested interests supporting the status quo to create skepticism about the working of the local governments." The dream of Mahatma Gandhi's Gram Swaraj could be converted into reality only when the little republics worked for equality and the prosperity of the people through great dedication.

Most States have held at least one round of elections since 1993. Reservations allowing the participation of women, Scheduled Castes and Scheduled Tribes have been respected (although there is great scope for corruption). Finally, voter participation has been high. In its study of 53 villages in Rajasthan and MP, for instance, the World Bank (Alsop et al., 2000) found that voter turn out in Panchayat elections was well over 90% for all categories (defined in terms of gender, class and caste). This is significantly higher than the (still high) turnout for the most recent (1998) round of Lok Sabha elections, which was 61% for women and 65.9% for men (Yadav, 1999).<sup>7</sup>

The World Bank study goes on to argue that although Indian States and the Union government have been willing to recognize the Panchayats, to hold elections and to respect stipulations governing reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and women, they have been unwilling to vest them with sufficient 'administrative control over significant functions or fiscal autonomy,' (World Bank, 2000a: xi). In most States, Panchayats have been handed a wide array of responsibilities without the necessary fiscal and administrative resources. .

Oommen (1999) compared the Conformity Acts of 12 Indian States and concluded that these acts had generally been an exercise in amending existing Panchayat legislation for the sake of satisfying the mandatory provisions of the 73<sup>rd</sup> Amendment.' He made the following observations:

- village Panchayats have delegated functions without adequate administrative, financial and technical support,
- Except the Panchayats in Kerala and West Bengal states, Panchayats of other states lack discretionary powers over spending and staff;
- there is insufficient clarity and differentiation of functions among Panchayats and other levels of government;
- States reserve the right to assign or withdraw functions to and from the Panchayats by 'executive fiat';
- Panchayats at all levels have inadequate powers of taxation;
- Panchayats lack autonomous budgeting powers.

Similarly, Vyasulu (2000) finds that State governments have devolved little finances and fiscal powers to the Panchayats. Instead, many have established 'parallel bodies' as a channel for development funding. Self-help groups (SHGs) connected to the Janmabhoomi programme in Andhra Pradesh and the Rajiv Gandhi Watershed 'Missions' in Madhya Pradesh are two illustrations of this trend.

The 73<sup>rd</sup> Amendment contains a number of provisions that aim to counter balance patterns of inequality and discrimination in rural India. Principal among these are the stipulations that:

- One-third of all seats must be reserved for women;
- There must be reservations for SCs and STs Proportional to their population; such reservations must apply to Sarpanches;
- The Gram Sabha has constitutional status as a formal deliberative body;
- Individual States may enact further provisions creating reservation status for other backward groups.

In theory, reservations and the Gram Sabha provide an important means of ensuring that marginal groups are incorporated into local politics and that representatives act in a way that is consistent with their formal responsibilities and the plural interests of their constituents. In practice, however, neither appears to have lived up to this (rather lofty) ideal. Studies of decentralization have consistently highlighted the fact that the 73<sup>rd</sup> Amendment and earlier attempts at decentralization have failed to prevent a local (and primarily landed) élite from controlling local Panchayats.

Micro-level studies have shown that Gram Sabha often fail to fulfil their role as deliberative bodies or as a mechanism for accountability (Alsop et al., 2000; Deshpande and Murthy, 2002; Nambiar, 2001). This is partly attributed to low levels of participation among the electorate as well as the non-cooperation of local officials. Examples of the latter include officials delaying or postponing Gram Sabha meetings, officials not attending Gram Sabha, and, more generally, official decisions having no bearing on decisions reached during the Gram Sabha (Crook and Manor, 1998: Chapter 2; Deshpande and Murthy, 2002; Nambiar, 2001).

Explanations for poor participation in the Gram Sabha include (e.g. Alsop et al., 2000; Nambiar, 2001):

- Limited benefits of participation;
- Opportunity costs, particularly on the part of very poor groups;

- Fear of disrupting existing patron-client relations;
- Corruption;
- Agenda fixing;
- Factionalism;
- Fear of exclusion from community.

The World Bank's study of 53 villages in Rajasthan and Madhya Pradesh (Alsop et al., 2000) found that gender and education were important determinants of political participation, measured in terms of campaigning, attending rallies, supporting a candidate, influencing voters, contacting a public representative, and attending Gram Sabhas. Interestingly, wealth – measured in terms of land holdings – was not a strong determinant of public participation (see below). Along similar lines, Deshpande and Murthy's study of Panchayati Raj in Karnataka (2002) found that levels of participation were 'considerably low', particularly among women. Similar conclusions have emerged from field studies in West Bengal (Ghatak and Ghatak, 2002), Rajasthan and Haryana (Nambiar, 2001).

Even when there are reservations to ensure that marginal groups have a place in the Panchayat system, there is evidence to suggest that these formal institutions have been usurped by more informal patterns of domination and power. Reservations for women, for instance, are notoriously prone to corruption by male relatives, excluded from formal participation by their lack of scheduled status (Vyasulu and Vyasulu, 1999). Similar patterns have been observed among SCs and STs, whose economic well-being is dependent on the patronage of local élites.

### **1. Lack of coordination between the rural PRIs and urban local bodies:**

At present, there is lack of coordination between the PRIs and the urban local bodies. Article 243 ZD of the Constitution provides that the municipal bodies are expected to coordinate and work in tandem with other institutions of self-government. The chairman of the zilaparishad is the chairman of the district planning committee and the mayor of the municipal corporation and president of the municipal councils in the district are members of this constitutional body.

## **2. Weak social auditing:**

Technically the panchayats do not have adequate expertise, manpower, and skill to plan and implement development schemes and projects. Thereby they are increasing their dependence on the state apparatus (Dhaka, 2002). This puts them on the defensive while facing social auditing by the community.

## **3. Politicization of PRIs:**

Many Sarpanches contest elections under the patronage of national and regional political parties, as it facilitates their political advancement. This has promoted the use of money and muscle power and even communal clashes have taken place in panchayat elections.

Politicization of the panchayats is also responsible for the dismal functioning of Gram Sabha.

## **4. Centralization of power in the hands of Sarpanches:**

Centralization of power in the hands of Sarpanches dilutes the objective of deconcentration of power. Citing the case of West Bengal, Ghatak and Ghatak (2002) remarked 'the power of the village council is totally concentrated in the hands of Pradhans (Presidents), for all practical purposes, and the Pradhan is a powerful man'. During training programme of representatives of the PRIs in Punjab, many Panches complained that the Sarpanches did not take them into confidence while performing the functions of gram panchayats such as spending government grants, selecting the beneficiaries of welfare schemes and implementation of development programmes.

## **5. Growth of parallel bodies:**

The parallel bodies taking away functions of PRIs is a growing concern. Water user groups, joint forest management committees and expert committees are a few examples of the working of parallel institutions in different states. A parliamentary standing committee commented that these parallel bodies were undermining the decision-making powers of the Gram Sabhas and the gram panchayats. Even the youth clubs, Mahila Mandals and other village level organizations, that get direct

grants from the government were undermining the role assigned to the PRIs by the constitution.

However, the impetus gained momentum with the statutory recognition of local bodies as institutions of rural and urban self-government after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments in 1993. Although this was not done as a component of structural reform, the attempt at decentralization coincided with other market-oriented reform efforts.

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<sup>3</sup> A Quarterly of local Self Government Institute, Bombay No. 128, PP. 452-53.

<sup>4</sup> Mahatma Gandhi's statement was quoted from Harijan, January 18, 1948

<sup>5</sup> Jawaharlal Nehru's statement quoted from book by Gurumurthy, U, Panchayati Raj and Weaker

Sections. Ashish Publishing House, New Delhi, 1987.

<sup>6</sup> SK Dey's statement quoted from Das, HH, Introduction to Panchayati Raj and Community

Development in India, Kalyani Publishers, 1990.

<sup>7</sup> Rajiv Gandhi's statement was quoted from Ministry of Panchayati Raj, Government of India, The Tribune, August 20, 2004.

<sup>7</sup> However, as the authors (Alsop et al., 2000) point out, high voter turnout is possibly more reflective of local patronage networks than it is of a vibrant democracy.

Criminalization of politics is one of the major threats to the Indian democracy. Democracy implies rule of law and holding of free elections to ascertain the will of the people but in last few decades due to criminalization of politics, this very essence of the democracy is lost and the socio-political fabric of our country has greatly been vitiated. Elections in the world's largest democracy have been attracting an ever larger number of criminal elements and this trend is evident across all political parties. It is ironical that while Indian citizens have the power to change their government democratically, they have not been able to stop the criminalization of politics resulting in the erosion of civil liberties. Despite all the agitation of the civil society over this issue, political parties tend to succumb to the temptation of enlisting the support of criminal elements and accord primacy to their "winnability" factor and electoral clout. It's shameful to admit that in the world's largest democracy the cult of the gun prevails; goondas and criminals are hired to capture booths and kill political rivals, etc. and thus, the entire democratic process is negated.

As politics increasingly become agenda less, with winning election itself becoming the sole agenda, politicians started soliciting the help of known outlaws in winning elections with muscle and arms. In the process, a person with criminal antecedents and potentialities came to be regarded as a valuable resource by election managers and criminality an important input for electoral success.

Broadly criminalization of politics would mean, (i) the use of 'money power' and 'muscle power' by politicians, especially during elections, (ii) aiding and abetting crimes and sheltering criminals by politicians in power, if necessary, by interfering in the working of the law enforcement agencies, (iii) politicization of the administration, particularly the police with the latter obliging politicians in power by permitting interference and sometimes being privy to it, (iv) persons with a record of heinous crimes such as murder, extortion, kidnapping being selected to the state legislatures and parliament, and (v) criminals succeeding in occupying high places of honour and status in governance, say becoming ministries and governors.

The criminalization of politics continues to be a very big concern, with an increase in the number of MPs with criminal records in 2004 from 128 to 150 in 2009 (Table 4.1). Even the number of MPs with serious criminal cases has gone up. The biggest reason for this seems to be the undemocratic and autocratic selection and nomination of candidates by political parties. In order to ensure the win ability of candidates, parties ignored honesty to give preference to muscle power and money power.

Table 4.1: Number of MPs with Criminal Records in 2004 and 2009 LokSabhas

	2004	2009	% increase
MPs with criminal records	128	150	17.2
MPs with serious criminal records	55	72	30.9
MPs with serious criminal charges	302	213	-29.5
Total criminal cases	429	412	-4.0

Amongst the political parties, BJP has maximum MPshaving criminalcases—42MPshavecriminalcases against them, outofwhich 17 MPshave seriouscriminal casesagainst them. Congresshas 41 MPswith criminalcasesout ofwhich 12 MPshave seriouschargesagainst them. SP has8 MPswith criminalcasesout ofwhich 7 hasseriouscharges, followed by Shiv Sena which has8 MPswith criminal chargesout ofwhich 3 have seriouscharges (Table 4.2).

Amongst the states, UP has maximum MPswith criminalcases (total of 31, out of which 22 MPs have serious charges against them). Maharashtra is second with 23 MPshaving criminalcases out of which 9 have serious cases against them. It is followed by Bihar, Andhra Pradesh and Gujarat.

The influence of muscle power in Indian politics has been a known fact since the first general elections of 1952 and use of outlaws by politicians to promote their electoral prospects was alleged. However, the intensity and the frequency of such allegations have increased significantly. In fact, we have today reached a stage

where criminalization of politics is widely accepted as inevitable.

Table 4.2: Party-wise Number of MPs with Criminal Records in 2009 Lok Sabha

Party	Total MPs	MPs with Criminal Charges	Percentage of MPs with Criminal Charges	MPs with Serious Criminal Charges	Percentage of MPs with Serious Criminal
BJP	116	42	36.21	19	16.38
INC	202	41	20.30	12	5.94
SP	22	8	36.36	7	31.82
SS	11	8	72.73	3	27.27
JD(U)	20	7	35.00	3	15.00
BSP	21	6	28.57	6	28.57
BJD	14	4	28.57	1	7.14
AITC	19	4	21.05	4	21.05
NCP	9	4	44.44	3	33.33
DMK	16	3	18.75	1	6.25
RJD	4	3	75.00	2	50.00
CPM	15	3	20.00	1	6.67
ADM	7	3	42.86	3	42.86
RLD	5	2	40.00	1	20.00
JD(S)	3	2	66.67	1	33.33
TDP	6	2	33.33	1	16.67
JVM	1	1	100.00	0	0.00
VCK	1	1	100.00	1	100.00
AIMI	1	1	100.00	1	100.00
SAD	4	1	25.00	0	0.00
IND	9	1	11.11	0	0.00
JMM	2	1	50.00	1	50.00
TRS	2	1	50.00	0	0.00
AIFB	2	1	50.00	1	50.00
Total	533	150	28.14%	72	13.51%

It was reported in early nineties that there were 30-35 such legislators and two Lok Sabha members in India who, before they became legislators/MPs, used to do their job of stamping ballot papers, looting ballot boxes and capturing booths for their Netas. When the importance of booth capturing became clear on them, they jumped into the electoral fray themselves. Some of them became independent

candidates, whereas some others entered the election fray on tickets of political parties (Nav Bharat Times, 1993). These people's policy has been might is right, that is capturing booth with the help of 'danda', stamping ballot papers, making ballot boxes disappear. By doing so and winning election easily, such people entered Vidhan Sabha and Lok Sabha. The last state assembly elections of Bihar, UP, Haryana, Jharkhand, and Andhra Pradesh pointed out towards one obvious trend in Indian politics, i.e., increasing criminalization of politics.

Criminalization of politics started with politicians seeking the assistance of criminals, in particular to fight elections. In the area of criminalization of politics and politicization of crime, criminals needed the politicians' protection against the processes of law and therefore they paid them. Politicians needed huge sums of unaccounted money for political activities, their parties, elections and for themselves. Nobody could pay hard earned, white, tax-paid money to the politicians. Therefore, funds from the crime world come handy. Gradually the politicians became subservient, and a stage came when politicians began seeking not only their help in terms of money but also of muscle power for their own physical protection from rivals. And, finally dons of the crime world themselves entered politics. Thus, persons known to have a criminal past becoming legislators and ministers has not only become common but is being openly defended by leaders of political parties. A stage has now been reached when politicians openly boast of their criminal connections.

Moreover, in the event of conviction and resulting disqualification, with the blessings of their party establishments, such elements are encouraged to pass on their mantle to their wives and progeny. It is a happy indication that many such proxy candidates were defeated in the 2009 Lok Sabha polls. But the fact remains that despite the best efforts of the Election Commission; the use of muscle power is a harsh reality and significantly influences the voting behaviour and the electoral outcome in many constituencies. A former CM of a renowned state of India passed a comment when media questioned him for having his Cabinet Ministers with serious criminal records, *"I don't bother about the ministers' past. After joining the government, they are not indulging in crimes, and are ready to help suppress*

*criminal activities. Ask the people why they have elected them."* How such a comment will be accepted in the world's largest democracy.

A new culture of acceptance of the criminalization of politics at the highest political levels in the country was born post 1980. Prior to the 1998 general elections, the Election Commission declared that under the Representation of Peoples Act, a person convicted of an offence would be disqualified to contest an election, even if an appeal was pending in court. The stand of the election Commission is legally valid, but it has awakened very late. As it is noted, when the Lok Sabha elections were held in late 1979, Sanjay Gandhi and V. C. Shukla had been convicted by the session judge, Delhi for two years for offences of entering into a criminal conspiracy during the Emergency to destroy the film materials of KissaKursiKa, and of committing various other offences in consequence. Their appeals were pending in the Supreme Court and yet they were allowed to contest election.

Much later, Chandershekhar's attitude was very similar in case of Chandra Swami who was facing prosecution and was under investigation in several cases, including his involvement with BablooSrivastva. The former Prime Minister defended the so called 'god man' saying, "No person should be prosecuted or harassed just because someone is doubting his integrity or leveling all sorts of allegations against him."<sup>267</sup>

Criminal elements and political parties have not looked back since the process started. Political parties have been vying with each other to nominate more and more mafia leaders, history sheeters, and persons charged with grave offences as their candidates in successive elections.

It is the fact that certain criminals have been elected from prisons. Others have been reported holding durbars in jail, with all home comforts, as they instruct their minors by cell phone and rule their empire, issuing diktats that few dare disobey. Some take anticipatory bail to avoid arrest. Others find it easier to abscond while notices for their production in court are pasted on walls, nailed on doors and published and broadcast by the media. And when they are ready, they "surrender", engaging clever lawyers to argue their case.

It would be recalled that the issue of convicted candidates being allowed to contest elections had come to the fore when Navjot Singh Sidhu, cricketer-turned politician who had been elected to the 14<sup>th</sup> Lok Sabha, was convicted by the Punjab and Haryana High court in December 2006 under section 304 of the IPC and sentenced to imprisonment for three years. Although the law allowed Sidhu to continue as MP during the pendency of his appeal against conviction, he chose to resign on moral grounds and seek re-election from the same constituency. But for contesting an election, he needed a special dispensation and the apex court gave him the desired reprieve by temporarily staying his conviction, enabling him to contest the by-election.

In the recent general elections, a number of candidates with a record of conviction had approached various courts seeking similar exemptions. It is in this context that the Supreme Court's decision to treat Sidhu's case as an exception must be celebrated for the simple reason that it would otherwise have opened a Pandora's Box and encouraged convicted felons of all descriptions to seek greener pastures in various legislatures.

In an earlier landmark judgment delivered on March 13, 2003, the Supreme Court had made it mandatory for all candidates contesting elections to the Parliament and state legislatures to submit, along with their nomination forms, an affidavit disclosing details about their criminal, financial and educational backgrounds. This judgement came as the result of a four year long campaign by several civil society groups for greater transparency and accountability in the electoral processes.

It is not difficult to see why political parties put up criminals as candidates. Given a situation in which the sanctity of elections is being increasingly undermined by rigging and booth-capturing, a criminal with muscle power has greater chances of winning than a clean and decent individual without such 'capabilities'. And most often criminals do win, which is why they are increasingly present in the country's representative institutions. The consequences of the trend, if allowed to continue unchecked, hardly deserve an elaboration and are seen in the increasing criminalization of the process of governance with ministers, legislators,

bureaucrats and unscrupulous businessmen combining to plunder public funds and prey on the public.

It is well known that all parties take the help of criminal elements to dominate the election scene in India. But this process is influencing the mind and the will of the people both to gain the majority to rule the country according to their will. The system of democracy is now changing into the dictatorship of some. Because the democracy of India are now in hands of the criminal who are not capable any way to hold the post if legislature.

A statement made in the assembly by a minister of a north Indian state that he patronized and would continue to patronize gangsters to fight and win elections is an indication of the growing phenomenon where criminal background has become a prerequisite to win elections. Despite the countrywide debate generated by the Vohra Committee Report on criminalization of politics, the system has changed only for the worse. Earlier in the 1960's, the criminal was content helping (covertly) the politician win the election so he could in turn get protection from him. The roles have now been reversed. It is now the politician, who seeks protection from criminals. The latter seek direct access to power and hence become legislators or ministers.

The Election Commission's observation that nearly 40 members of the 11<sup>th</sup> Lok Sabha and 700 members of the state assemblies had a criminal past proves this. The Election Commission's requirement that the prospective candidates file an affidavit listing the criminal charges they face has hardly made any dent in the growing criminalization of politics. Some radical reforms in the existing law need to be undertaken urgently. Until this is done, political parties could take some initiative to curb this trend, by denying tickets to politicians with a criminal background. Far from it, party leaders invariably issue tickets to those with a criminal past because they cannot only win elections, but also help other candidates win. The Election Commission is powerless in preventing criminals from contesting elections. The Representation of People Act allows it to debar candidates convicted of certain crimes, but cannot prevent those under trial or whose appeals from their earlier convictions are pending for disposal before the higher court for multiple murders or rape or corruption or theft from the public

exchequer from representing the people in the country's highest legislative forums. There have been a number of cases where persons under trial have contested elections, while in jail and won. Unfortunately, no political party has taken any concrete step to curb this malpractice.

Lately, the Election Commission of India has taken noticeable measures to check criminalization of politics. It has already banned convicted people from contesting elections to the state legislature or parliament, at the same time; it has asked all criminally-charged persons to disclose all the charges they face, in the nomination paper. This information will be easily made available to the public. Cases pending against politicians should be settled as quickly as possible. It is found that cases against them remain pending for long and they keep winning elections while the cases remain pending. Later, with their ministerial power, they manipulate the cases in their favour. Withdrawal of criminal charges against some tainted ministers of the present government is a case in point.

Thus what we are facing today is not only criminalisation of politics, but what is a more sinister development, politicization of criminals.

## CANKER OF CRIMINALIZATION OF POLITICS:

CRIMINALIZATION OF POLITICS- CAN IT BE STOPPED.... Is there a way out?

Among the Indian intelligentsia, the increasing Criminalization of politics has become an issue of prime concern. It is the high time for the custodians of democracy in India- its common man- to pressurize the political parties to stop giving tickets to candidates with tainted records so that the politics will not become a piece of cake for criminals.

The Campaign for NO CRIMINALS in Politics:

Let's have a campaign for "No criminals" in Politics; not only in India alone but in the whole south Asia. If we want to save the democratic institutions of any country then there has to be a criminal's free politics. Let's join hands together to save our legislative and executive bodies from the wounds of any society - Criminals Cum Politicians. I am very optimistic that we will be able to manipulate this problem very soon.

The Government and law enforcing authorities remained helpless in the face of this muscle-power and gangsterism unlimited. To-day a number of Chief Ministers have close links with criminals, a large number of MPs and MLAs are men with criminal records. Criminals have infiltrated into Indian socio-political life and future of Indian democracy seems to be bleak. Gun-looting goondas and gangsters move about merrily eliminating their political opponents and creating terror, and nobody seems to fear much for this show of naked and unabashed violence. It seems that nobody has the means or the will to put down such nefarious activities with an iron hand.

Criminalization of Indian politics and the consequent cult of the gun is the greatest danger that faces Indian democracy to-day. Leaders of all political parties and intellectuals deliver eloquent speeches expressing their abhorrence at the infiltration of criminals into the electoral arena. Stress is laid on eliminating the use of muscle power in the electoral process. Yet, the majority of the parties remain satisfied with expressing such pious sentiments. In any case there is no inhibition in securing the services of musclemen and anti-social elements in order to ensure success at the hustings. Quite often the plea put forward for this purpose is that it is a defensive measure to off-set and resist the doings of the anti-social elements engaged by the rival candidates. The malady has gone deep into our body politic and unless we can deal with it with a firm hand in ruthless manner, the danger is that the electoral process would pass into the hands of anti-social elements and thus slide down and degenerate into a farce.

The entry of criminals into the political arena has caused havoc in the sphere of the administration of criminals' justice. The likelihood of injustice in a democracy is supposed to be much less than under systems where civil liberties are suppressed and there is absence of democratic norms. There is thus a close relationship between democracy and rule of law. These two along with liberty, are indeed

considered to be the three faces of the supreme trinity which presides over the destiny of all liberal societies. Each one of them is vital for the survival of the other two, for the negation of one would prove fatal for the other two.

Democracy needs restraints and a willingness to abide by a code of self-discipline. It has been recognized that even though man be only a little lower than angels, he has not shed the brute within him. The murderer lurks not far beneath to break out from time to time. To curb and control the brute within man and to prevent the degeneration of society into a state “red with tooth and claw”, we need the rule of law and a suitable agency to enforce it. Such an agency is furnished by the Courts. Criminal law is, therefore, looked upon as the most effective weapon of social defense.

Despite all the professed abhorrence for the use of muscle power in the course of elections, a large number of politicians take its aid. It may be that some make unabashed use of it with a view to intimidate voters for securing their votes, while many others take the help of muscle power as a defensive strategy against the muscle power of rival candidates. The result is that the use of muscle power has become a regular feature of the electoral process. The intellectuals may decry this practice, the newspapers may carry long articles in condemnation of it, the public spirited persons may describe it as a negation of free and fair elections but the fact remains that the vice exists and one cannot run away from harsh reality. Large scale violence in a number of constituencies during the elections to the Lok Sabha and various assemblies is a grim reminder of the existence of this malady in the politic body.

It is also a fact that the bigger a Goonda is; the greater is considered to be his usefulness and value during the course of elections. So the politicians take the help of such antisocial elements while contesting the elections. The electoral process thus leads to close links between the anti-social elements and the politicians. The consequence is that when the anti-social elements get into trouble with the law enforcement agencies they invariably look to politicians to extricate them out of their difficulties. The politicians on their part find it difficult to resist the demands of the criminals to whom they are indebted. In fact the help rendered by

politicians to anti-social elements, when the latter are in difficulty is a kind of return for the support given by the anti-social elements to the politicians at the time of elections.

The close links of the anti-social elements with the local politicians act as a deterring factor for the law enforcement agencies from proceeding and taking strong action against them. During recent years, however, we have come across action a new strategy being adopted by such anti-social elements. Many of them are swayed with the idea that if their grip over substantial sections of the electorate by erosion and intimidation or otherwise, and their capacity for booth-capturing and rigging or use of other unfair means, at pistol and dagger points can ensure the election of others, why should they not use that grip or capacity for ensuring their own election as member of the legislatures?

According to newspaper reports about 100 elected members in a State legislature during the last five years had criminal history-sheets. We can well imagine the fear of policemen while dealing with such elements. Many policemen in these circumstances consider “discretion to be the better part of valour” and turn a blind eye to their nefarious acts. Experience also tells us that once a person gets elected to a legislature the election secures for him not only some kind of reprieve from legal process for his past activities, but also affords him virtual immunity from further proceedings against him for breach of criminal law. It is no doubt true that this is not legally permissible and the law does not countenance such a state of affairs, but ways are always found to circumvent the law.

There is rampant interference in the course of investigation of criminal acts of local politicians. That there is such interference is a harsh reality which cannot be denied. There can also be no doubt that unless there are efficient investigation resulting in the collection of credible evidence, the prospect of securing the conviction of the accused culprits as a result of judicial trial, becomes extremely remote. This has led to a situation of increased incidence of acquittals in major criminal cases involving M.P.s and M.L.A.s and even ministers

Once the impression prevails that it is difficult to secure the conviction of an accused in a court of law, the victim of the offence or their close relatives, look to extra-legal methods to settle score with the culprits. Such a situation means a

collapse of criminal justice and these results in a state of the chaos and anarchy. The effectiveness and potency of the administration of criminal justice can be ensured only if we can eliminate, or at least minimize, political and other extraneous interference in the investigation of crimes.

All right minded citizens should put their head together to find out ways and means of saving Indian democracy from this menace. If criminals continue to flourish without any check and carry on their activities no body's life, property and honour would be safe. Indian democracy must be saved from the prominence of criminals and all the evil that it implies. Under no circumstance should law be taken into one's own hands. However, in this respect the rules of the country themselves are not free from blame, for they have been guilty of inciting the people to take recourse to violence.

Not only the new government must tackle these issues on a priority basis and include them in their agenda but it's very important on people's part to be aware of not voting for the wrong person and be a part of '*No to Criminals in Politics*'

Gandhiji believed that democratic freedoms have to be founded in institutions of selfgovernment in every village in India. He drew his inspiration from the traditional Panchayats; 'village republics', which he called Panchayati Raj. He based his vision of contemporary democracy in independent India on genuine peoples' participation in the development and welfare of their own habitats through elected Panchayats. Dr Bhimrao Ambedkar, the father of our Constitution, provided for Village Panchayats in the State List of the Seventh Schedule, but consistently stressed the need to incorporate reservations for the depressed segments of our society in the structure of Panchayati Raj. Rajiv Gandhi ensured this and added reservations for women of all said categories in Panchayats. His declared objective was 'Power to the People' through the Panchayats, thus making India not only the world's biggest democracy, but also the world's most representative democracy.

The philosophy of Panchayat Raj is deeply steeped in tradition and culture of rural India and is by no means a new concept. Panchayati Raj Provided a system of self-governance at the village level, however, it did not have a constitutional status. The Constitution (Seventy-third Amendment) Act, 1992 provides a framework on which to build the third level of governance panchayats.

Mahatma Gandhi, the Father of the Nation once stated, "Independence must be at the bottom ... it follows, therefore, that every village has to be self-sustained and capable of managing its affairs..."

April 23, 1993 is a landmark day in the history of Panchayati Raj in India as on this day, the institution of Panchayati Raj was accorded constitutional status through the Constitution (Seventy-third Amendment) Act, 1992, thereby seeking to transform Mahatma Gandhi's dream of Gram Swaraj into reality.

The Constitution (73rd Amendment) Act, 1992 mandates provisions for :

Establishment of a three-tier structure (Village Panchayat, Panchayat Samiti or intermediate level Panchayat and Zilla Parishad or district level Panchayat).  
Establishment of Gram Sabhas at the village level. Regular elections to Panchayats every five years. Proportionate seat reservation for SCs/STs. Reservation of not less than 1/3 seats for women. Constitution of State Finance Commissions to recommend measures to improve the finances of Panchayats. Constitution of State Election Commission.

The Constitution (73rd Amendment) Act, 1992 vests power in the State Government to endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government such as :

Preparation of plans and their execution for economic development and social justice in relation to 29 subjects listed in the XI schedule of the Constitution.

Authority to Panchayat to levy, collect and appropriate taxes, duties, tolls and fees.

Transfer of taxes, duties, tolls and fees collected by the States to Panchayats.

**Gram Sabha** Gram Sabha is a body consisting of persons registered in the electoral rolls of a village or a group of villages which elect a Panchayat.

A vibrant and enlightened Gram Sabha is central to the success of the Panchayati Raj system. The year 1999-2000 has thus been declared as the "Year of the Gram Sabha". State Governments have been urged:

To vest in the Gram Sabha, powers on the lines envisaged in the Provisions of the

Panchayats (Extension to the Scheduled Areas) Act, 1996.

To make a mandatory provision in the Panchayati Raj Act for holding Gram Sabha meetings throughout the country on the occasion of the Republic Day, Labour Day, Independence Day and Gandhi Jayanti.

To make a mandatory provision in the Panchayati Raj Act specifying separately, the quorum for Gram Sabha meetings, for ordinary meetings, meetings convened for special purposes and re-convened meetings due to cancellation of an earlier meeting for want of quorum.

To make members of the Gram Sabhas aware of their powers and responsibilities with a view to ensuring mass participation, particularly of the hitherto marginalised, groups, such as women and SCs/STs.

To lay down procedures for the Gram Sabha to effectively carry out social audit of beneficiary oriented development programmes of the Ministry of Rural Development, particularly the legal powers of the Gram Sabha to order recovery or punishment for financial mismanagement.

To evolve a plan of action for generating wide publicity for Gram Sabha meetings.

To evolve guidelines/procedures for holding Gram Sabha meetings and a model list of business for such meetings.

To generate awareness as to the rights of the Gram Sabha with respect to control over natural resources, land records and conflict resolution.

The Constitution (Seventy-third Amendment) Act, 1992 envisages empowered Panchayats as institutions of self-government at the village level capable of:  
Planning and executing village level public works and their maintenance.

Ensuring welfare of the people at the village level including health, education, communal harmony, social justice particularly gender and caste based discrimination, dispute resolution, welfare of children, especially the girl child.

The Constitution (Seventy-third Amendment) Act, 1992 also envisages empowered Gram Sabhas as the Parliament of the People at the grassroots level to whom the

Gram Panchayats are solely accountable.

After independence, the process of empowering Panchayats gathered momentum. Mahatma Gandhi, the father of the nation, while emphasizing on 'Gram Swaraj' (village autonomy) strongly advocated that:

***"Independence must begin at the bottom. Thus every village will be a republic of panchayat having full power."*<sup>4</sup>**

The spirit and importance of Panchayati raj system found place in Article 40 of the Directive Principles of State Policy of the Constitution of India, which says:

***"The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."***

Pandit Jawaherlal Nehru the first Prime Minister of India, considered panchayats as an important socio-economic and political institution at the village level. While inaugurating the Panchayati Raj in Rajasthan in 1959, he underlined the importance of people taking responsibilities:

***"to uplift millions of villages is not an ordinary task, the reason for the slow progress is our dependence on official machinery. An officer is probably necessary because he is an expert. But this can be done only if the people take up the responsibility in their own hands. The people are not merely to be consulted, but effective power has to be entrusted to them."*<sup>5</sup>**

Former Prime Minister Rajiv Gandhi, while emphasizing on the significance of panchayats had remarked:

***"We must put an end to planning from above. We must put an end to priorities being conceived and decided at ethereal heights, far from the ground realities."*<sup>7</sup>**

The First Five Year Plan also recognized the need for disaggregated planning through a process of democratic decentralization incorporating the idea of a village plan and a district development council. The Government of India constituted

several committees at different points of time to strengthen the local self-government institutions. The first one was the Balwantray Mehta Committee constituted in 1957. The committee recommended the urgency of democratic and elected institutions at the lowest level and suggested a three-tier system at the district, intermediate and village levels. K Santham Committee constituted in 1959, in its report in 1965, recommended setting up of a Panchayati Raj Finance Corporation and district election commissions. Ashok Mehta Committee (1977) recommended a two-tier set-up at district and village level. The Sarkaria Commission on Centre-State relations appointed in 1983 recommended in its report that the objectives of decentralized planning cannot be achieved unless the Panchayati Raj and other local bodies are allowed to perform their assigned role. Taking into consideration all these recommendations and success of West Bengal, Karnataka and Andhra Pradesh experiment and the prevailing mood for decentralization, Prime Minister Rajiv Gandhi introduced the 64<sup>th</sup> Constitutional Amendment Bill in 1989, which was passed by the Lok Sabha, but failed to get the concurrences of the Rajya Sabha. Later, a cabinet committee was constituted to look into the contents of the Panchayati Raj Bill of 1989 afresh and a comprehensive amendment was introduced in the form of the Constitution 73<sup>rd</sup> Amendment Bill in 1992 during the Prime Ministership of P V Narasimha Rao, which was passed by both the Houses of Parliament and came into effect on April 24, 1993. The 73<sup>rd</sup> amendment of the Constitution is an epoch making event in the history of democratic decentralization in India. The main features of the 73<sup>rd</sup> Constitutional Amendment are presented in table 1.

**Table 1: Key Features of 73<sup>rd</sup> Constitutional Amendment**

<b>S. No</b>	<b>Key Features</b>	<b>Provision in the Act</b>
1	Three Tier Structure	Article 243-B, Gram Panchayat at Village level, Intermediate Panchayat at Block Level and District Panchayat at the District Level

2 Elections at every five years	Article 243-E, every Panchayat shall continue for five years from the date appointed for its first meeting and no longer.
3 Reservation of seats for Scheduled Castes and Scheduled Tribes	Article 243-D, reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of panchayats.
4 Reservation of seats for women	Article 243-D (3), provides that not less than one third (including the number of seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled up by direct election in every panchayat shall be allotted by rotation to different constituencies in a panchayat.
<b>5 Establishment of State finance Commissions</b>	Article 243-I provides for constitution of State Finance Commission to review financial position of the Panchyat Raj Institutions (PRIs) and to make recommendations to the Governor and distribution between the state and the PRIs of the net proceeds of the taxes, duties, tolls and fees leviable by the state.
6 Establishment of State Election Commission	Article 243-K, provides for the establishment of State Election Commission. The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the panchayats shall be vested in the State Election Commission.
7 Establishment of District Planning	Article 243ZD provides for the constitution of DPCs to consolidate the

Committee (DPCs)	development plans prepared by the gram panchayat.
8 29 duties and responsibilities	Article 243 (G), made addition of Eleventh Schedule and assigning duties and responsibilities on 29 subjects.
9 Establishment of Gram Sabha	Article 243, provides for gram sabha to exercise such powers and perform such functions at the village level as the legislature of a State may by law provides.

In conformity with the Constitutional Amendment all the states have amended their state Acts or passed new acts repealing the then existing ones. Today the PRIs are the bedrock of effective implementation of India's rural development and poverty alleviation programmes. It is true that, if effectively empowered, the PRIs have the potential to build a progressive India (which truly lives in its villages) in harmony with the felt needs and aspirations of the people.

### **Loopholes in Panchyati Raj System**

Independent India's local government system was to be rooted in Mahatma Gandhi's philosophy of Gram Swaraj, making the village a complete republic-independent of its neighbors for its own vital wants and yet interdependent for many others, based on mutual cooperation. Though India has had a unbroken history of village panchayats and caste panchayats, they were not true democratic bodies as privileges attached to caste, landholding and other factors prevented them from functioning as the forum of common people. omen and Dalit's had no voice at all. This was one of the main reasons for the comparatively static life in rural India. In a radical departure from the past, the Panchayati Raj or village self-rule envisaged by Mahatma Gandhi was both a means as also an end. He believed in panchayats' immense potential for democratic decentralisation and for devolving power to the people. Despite the fact that villages of India have had a long history of the panchayats being the basic unit of administration and the nationalist movement's clear commitment to panchayats as the primary unit of administration, the first draft of India's Constitution did not include a provision for establishing panchayats in the free republican India. But because of the

efforts of Gandhian scholars and followers in the Constituent Assembly, the provision (Article 40) relating to village panchayats in part IV of the Constitution (Directive Principles of State Policy) was included. Instead of establishing Panchayats as vehicle for economic development and social justice in rural areas, Community Development Programme in 1952 and National Extension Services in 1957 were launched which could not evoke people's participation in rural development as these programmes were bureaucratic in orientation. To enquire into the causes and apathy of the rural population towards these programmes and to suggest some corrective measures, a committee was constituted under the chairmanship of Shri Balwantrai Mehta. The committee submitted its report on the 24<sup>th</sup> of November 1957. This committee in fact laid the foundation stone of the Panchayati Raj in India. But the interest and support for Panchayati Raj did not last long. The apathy towards Panchayats remained. Flow of funds for block development started declining. In many states elections to these bodies were postponed indefinitely. After two decades in 1978 Asoka Mehta Committee, after evaluating the progress of the Panchayats, had recommended Constitutional status to the Panchayats, participation of political parties in Panchayat elections, adoption of a two-tier system at District and Mandal levels and establishing a finance body like Panchayati Raj Finance Corporation for providing credit to the Panchayats. In 1986 the L. M. Singhvi Committee, among others, also recommended constitutional status to the Panchayats. It is against this background that the 73<sup>rd</sup> Amendment (1992) to the Constitution was made. The 73<sup>rd</sup> amendment certainly marked the beginning of a new era in the annals of Panchayati Raj in India. The Institutional mechanism of Panchayati Raj has now got a new thrust and dynamism and certainly is a great improvement over the earlier system in several ways. First, the state governments are under a constitutional obligation to implement the new system envisaged under the amendment. Secondly, reservation for women, scheduled castes, scheduled tribes and other backward classes have significantly altered the power scenario. Thirdly, provisions for conducting free and fair elections with the help of state level Election Commission and Finance Commission to devolve greater resources to these bodies are a great landmark in the history of Panchayati Raj. But the question here is whether the people in the rural areas, who are going to manage the institutions, have been truly involved so far in

connection with the implementation of new system? Several years have been lapsed since the beginning of the New Panchayati Raj system in India after the enactment of the 73<sup>rd</sup> Amendment to the Constitution. During this period assessment of the working of the panchayats shows that Panchayats have not entirely fulfilled the people's aspirations in terms of becoming participators in decision making, in decentralised governance, planning and development. Instead of establishing Panchayat, participation of the poor in local governance has not entirely been ensured by way of reserving seats for them in the Panchayats. Vital issues affecting local government have been either in the domain of the state government or central government.

Dr. George Mathew identifies some crucial issues, which pose problems for panchayats to become 'institutions of self-government'

(a) In the State Panchayat and Municipal Acts after 1992, one finds that the states have accepted the letter of the 73<sup>rd</sup> or 74<sup>th</sup> Amendments rather than their spirit. In many State Acts, civil servants are indirectly given powers over the elected body. Transfer of activities and functions to panchayats is taking place very slowly.

(b) Although all the states have passed conformity Acts, many of them are yet to formulate rules and byelaws for the day-to-day functioning of panchayats. Added to this, the necessary infrastructural facilities are lacking for panchayats in many states. Many a panchayat does not have even Panchayat Gharas yet.

(c) The paucity of panchayat personnel is also hampering panchayats' functioning particularly budget making. In many states one Secretary is in charge of two or three Panchayats.

(d) The reluctance of state-level politicians to recognize the importance of the lower level of governance – their autonomy their powers and their areas of functioning – is creating problems in devolving powers. Ministers, MLAs and senior political leaders are worried that the power they enjoyed so far will diminish if panchayats and municipalities become really powerful. **State-level leaders do not like local level leadership to emerge, which could pose-**

**challenges to them in due course.** MLAs put hurdles in the smooth functioning of Panchayats to prevent them from blossoming into full-fledged local governments.

(e) Government officials and government employees prefer to work with a distant control mechanism i.e., the state capital. They do not want to be closely supervised under Panchayati Raj. Therefore, their non-cooperative attitude towards elected panchayat members is a major issue. A related issue is that the officials who work at the district level and below are found to be reluctant to take orders from the elected panchayat executives like the District Panchayat President, Block Samiti President or Village Panchayat President.

(f) A low level of political consciousness in many parts of the country is another factor, which is pulling the new Panchayati Raj backwards. The states of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Orissa have a low Panchayati Raj performance rating. Madhya Pradesh was the first state to hold elections to panchayats after the 73<sup>rd</sup> Constitutional Amendment and elected local bodies came into existence. But soon reports began to appear in newspapers that all was not well with their functioning. A chain of events was reported 161 from different parts of the state: A lady president was stripped naked, another lady was gang-raped, a lower caste vice-president was tortured and a Scheduled caste panchayat member was beaten up.

(g) In many places panchayats themselves are working as oppressive instruments. Absence of land reforms, low levels of literacy, especially among women, patriarchal system, etc. work against weaker sections in the villages. A majority of people suffering from the effects of traditional oppressive power structures is unable to utilize effectively the new opportunities provided through panchayats. **Caste Violence can be seen during the panchayats elections.** “For the past two months the southern districts of Tamil Nadu have been rocked by caste related clashes in which six persons were shot dead by the police while 14 more were killed during the clashes...The main reason behind these clashes was the planned effort of oppressive castes to throw out Dalits from their settlements. It is a sorry state of affairs that even the political and the state power stood beside the oppressive castes.

Following this what happened at Melavalavu village on June 30, 1997 was the epitome of intolerance by high caste people. On that day just because the Dalits stood for elections to the village panchayat (Melavalavu being a reserved Constituency), the high caste people of the village brutally murdered six persons, including the president and vice president of the panchayat in broad daylight. They severed the head of the panchayat president and threw it inside a well. The post of panchayat president in this village was reserved for the Dalits during the recent panchayat elections. The high caste people, unable to face this encroachment on what they had traditionally considered their domain, protested against it and threatened the Dalits with reprisal if they contested for the post. They burnt even their houses.” It may be noted here that women representatives in the local bodies have not been treated with the dignity they deserve. In many instances, they are used as proxy members conduct meetings in panchayats and wield the real power. Also, the women elected members face violence if they dare to come out alone to attend meetings or show dissent. Working conditions in the panchayats are not congenial. Besides these handicaps, the general atmosphere of the politics has been vitiated with corruption, violence and petty-mindedness. A great deal of money is involved in contesting elections. All these factors affect the choice of deserving candidates among women and also their efficiency after they are returned. Atrocities against women representatives take place in several states. “Newly elected sarpanches of 38 gram panchayats in Bassi block of Jaipur district have unanimously passed a resolution condemning and deciding to boycott the saathins (Women community workers for social change), who in Rajasthan had been working especially to bring about an end to the wide spread system of child-marriage in the state. Incidentally, it was in a village in this same Bassi block that a saathin, Bhanwari Devi, was gang-raped by local goons, because she tried to prevent the marriage of a child. Beside this there are several other cases which reveal the gender inequality in Indian society. Mishri Devi, a ST Sarpanch, was stripped naked while unfluring the national flag on 15<sup>th</sup> August, 1998 at Thikarai village in Dausa district of Popara panchayat in Tilkarai district of Rajasthan. Gundia Bai, a Dalit Sarpanch of Pipara Panchayat in Tikamgarh district of Madhya Pradesh was prevented by her male up-sarpanch even from touching the national flag. “Another ugly development is the numerous no-confidence motions being

brought against female Sarpanches. If a no-confidence motion is passed against a chairperson or deputy chairperson by a two-thirds majority, he/she has to resign. This is how male deputy chairpersons in Panchayati Raj Institutions oust unwanted women office bearers and effect a takeover until fresh elections are held...Some sections of the politically and economically dominant caste groups, which had to cede Panchayat power to OBC/Dalit woman used no-confidence motion to return to the positions of power to protect their vested interests.” The reports of auctioning of panchayats in the newspapers can be seen, which is blow to the direct democracy and free and fair elections. “Even while the leaders of the various political parties in Tamil Nadu are busy firming up alliances for the coming elections to rural and urban bodies., there are reports from several villages that the village “elders”are engaged in finding a consensus among themselves to nominate presidents and members to the local bodies. The reports talk about auctions being held in villages and men (or women) who bid the highest amount are being “appointed” to the posts. Apart from the fact that such a method is inimical to the spirit of the constitution (elected panchayats being a mandatory requirement after the 73<sup>rd</sup> and the 74<sup>th</sup> Constitution Amendments), the fact that it is taking place more specifically in those village panchayats reserved for the Scheduled Castes is clearly a move against the empowerment of Dalits and all those ideas linked to achieving social justice.” There is a whole contradiction in the precept and the practice. The panchayats are totally dependent on the centre or state governments for their subsistence. Their autonomy is simply meaningless and empty. Election to the Panchayats is manipulated by clever feudal or caste elites. The villager has no power to recall or reelect a Panchayat. There is no process of referendum on any important issue. The village body as a whole cannot take any decision freely. Thus, the very institutions of direct democracy are missing. The illiteracy and poverty of the people prevents their coming out boldly against foul practices. Despite teething troubles, several developments point to a situation of poise and optimism. Non-Governmental Organisations, Community initiatives and people’s organisations are playing an important role in strengthening The Panchayats and municipalities. . A large number of NGOs are playing an important role in treating, enabling conditions for the success of the panchayats through awareness-building programmes, training of elected

members, especially women, ensuring their active participation in elections, and assisting panchayats in planning and implementation of social development strategies and programmes. Local bodies in India with their Constitutional legitimacy and interaction with citizens' groups and voluntary organisations present an ideal meeting point between the state and the civil society. The new Panchayati Raj is opening up possibilities for a better flow of information. Information is power and the dominant classes kept the ordinary people in the dark. Transparency in public dealing was missing because everything official was secret and confidential. "When democracy is in the hands of ordinary citizens, it can conquer poverty, ensure economic growth with equity, sustain healthy environment and work for human rights. Unfortunately forces against devolution of democracy to the grassroots are still powerful. One can discern deliberate attempts in the part of vested interests supporting the status quo to create skepticism about the working of the local governments." The dream of Mahatma Gandhi's Gram Swaraj could be converted into reality only when the little republics worked for equality and the prosperity of the people through great dedication.

Most States have held at least one round of elections since 1993. Reservations allowing the participation of women, Scheduled Castes and Scheduled Tribes have been respected (although there is great scope for corruption). Finally, voter participation has been high. In its study of 53 villages in Rajasthan and MP, for instance, the World Bank (Alsop et al., 2000) found that voter turn out in Panchayat elections was well over 90% for all categories (defined in terms of gender, class and caste). This is significantly higher than the (still high) turnout for the most recent (1998) round of Lok Sabha elections, which was 61% for women and 65.9% for men (Yadav, 1999).<sup>7</sup>

The World Bank study goes on to argue that although Indian States and the Union government have been willing to recognize the Panchayats, to hold elections and to respect stipulations governing reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and women, they have been unwilling to vest them with sufficient 'administrative control over significant functions or fiscal autonomy,' (World Bank, 2000a: xi). In most States, Panchayats have been handed a wide array of responsibilities without the necessary fiscal and administrative resources. .

Oommen (1999) compared the Conformity Acts of 12 Indian States and concluded that these acts had generally been an exercise in amending existing Panchayat legislation for the sake of satisfying the mandatory provisions of the 73<sup>rd</sup> Amendment.' He made the following observations:

- village Panchayats have delegated functions without adequate administrative, financial and technical support,
- Except the Panchayats in Kerala and West Bengal states, Panchayats of other states lack discretionary powers over spending and staff;
- there is insufficient clarity and differentiation of functions among Panchayats and other levels of government;
- States reserve the right to assign or withdraw functions to and from the Panchayats by 'executive fiat';
- Panchayats at all levels have inadequate powers of taxation;
- Panchayats lack autonomous budgeting powers.

Similarly, Vyasulu (2000) finds that State governments have devolved little finances and fiscal powers to the Panchayats. Instead, many have established 'parallel bodies' as a channel for development funding. Self-help groups (SHGs) connected to the Janmabhoomi programme in Andhra Pradesh and the Rajiv Gandhi Watershed 'Missions' in Madhya Pradesh are two illustrations of this trend.

The 73<sup>rd</sup> Amendment contains a number of provisions that aim to counter balance patterns of inequality and discrimination in rural India. Principal among these are the stipulations that:

- one-third of all seats must be reserved for women;
- there must be reservations for SCs and STs proportional to their population; such reservations must apply to Sarpanches;
- the Gram Sabha has constitutional status as a formal deliberative body;

- individual States may enact further provisions creating reservation status for other backward groups.

In theory, reservations and the Gram Sabha provide an important means of ensuring that marginal groups are incorporated into local politics and that representatives act in a way that is consistent with their formal responsibilities and the plural interests of their constituents. In practice, however, neither appears to have lived up to this (rather lofty) ideal. Studies of decentralisation have consistently highlighted the fact that the 73<sup>rd</sup> Amendment and earlier attempts at decentralization have failed to prevent a local (and primarily landed) élite from controlling local Panchayats.

Micro-level studies have shown that Gram Sabha often fail to fulfil their role as deliberative bodies or as a mechanism for accountability (Alsop et al., 2000; Deshpande and Murthy, 2002; Nambiar, 2001). This is partly attributed to low levels of participation among the electorate as well as the non-cooperation of local officials. Examples of the latter include officials delaying or postponing Gram Sabha meetings, officials not attending Gram Sabha, and, more generally, official decisions having no bearing on decisions reached during the Gram Sabha (Crook and Manor, 1998: Chapter 2; Deshpande and Murthy, 2002; Nambiar, 2001).

Explanations for poor participation in the Gram Sabha include (e.g. Alsop et al., 2000; Nambiar, 2001):

- limited benefits of participation;
- opportunity costs, particularly on the part of very poor groups;
- fear of disrupting existing patron-client relations;
- corruption;
- agenda fixing;
- factionalism;
- fear of exclusion from community.

The World Bank's study of 53 villages in Rajasthan and Madhya Pradesh (Alsop et al., 2000) found that gender and education were important determinants of political participation, measured in terms of campaigning, attending rallies, supporting a candidate, influencing voters, contacting a public representative, and attending Gram Sabhas. Interestingly, wealth – measured in terms of land holdings – was not a strong determinant of public participation (see below). Along similar lines, Deshpande and Murthy's study of Panchayati Raj in Karnataka (2002) found that levels of participation were 'considerably low', particularly among women. Similar conclusions have emerged from field studies in West Bengal (Ghatak and Ghatak, 2002), Rajasthan and Haryana (Nambiar, 2001).

Even when there are reservations to ensure that marginal groups have a place in the Panchayat system, there is evidence to suggest that these formal institutions have been usurped by more informal patterns of domination and power. Reservations for women, for instance, are notoriously prone to corruption by male relatives, excluded from formal participation by their lack of scheduled status (Vyasulu and Vyasulu, 1999). Similar patterns have been observed among SCs and STs, whose economic well being is dependent on the patronage of local élites.

### **1. Lack of coordination between the rural PRIs and urban local bodies:**

At present, there is lack of coordination between the PRIs and the Urban local bodies. Article 243 ZD of the Constitution provides that the municipal bodies are expected to coordinate and work in tandem with other institutions of self-government. The chairman of the zilaparishad is the chairman of the district planning committee and the mayor of the municipal corporation and president of the municipal councils in the district are members of this constitutional body.

### **2. Weak social auditing:**

Technically the panchayats do not have adequate expertise, manpower, and skill to plan and implement development schemes and projects. Thereby they are increasing their dependence on the state apparatus (Dhaka, 2002). This puts them on the defensive while facing social auditing by the community.

### **3. Politicization of PRIs:**

Many sarpanches contest elections under the patronage of national and regional political parties, as it facilitates their political advancement. This has promoted the use of money and muscle power and even communal clashes have taken place in panchayat elections.

Politicization of the panchayats is also responsible for the dismal functioning of gram sabhas.

#### **4. Centralization of power in the hands of sarpanches:**

Centralization of power in the hands of sarpanches dilutes the objective of deconcentration of power. Citing the case of West Bengal, Ghatak and Ghatak (2002) remarked 'the power of the village council is totally concentrated in the hands of pradhans (Presidents), for all practical purposes, and the pradhan is a powerful man'. During training programme of representatives of the PRIs in Punjab, many panches complained that the sarpanches did not take them into confidence while performing the functions of gram panchayats such as spending government grants, selecting the beneficiaries of welfare schemes and implementation of development programmes.

#### **5. Growth of parallel bodies:**

The parallel bodies taking away functions of PRIs is a growing concern. Water user groups, joint forest management committees and expert committees are a few examples of the working of parallel institutions in different states. A parliamentary standing committee commented that these parallel bodies were undermining the decision-making powers of the gram sabhas and the gram panchayats. Even the youth clubs, mahilamandals and other village level organizations, that get direct grants from the government were undermining the role assigned to the PRIs by the constitution.

However, the impetus gained momentum with the statutory recognition of local bodies as institutions of rural and urban self-government after the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments in 1993. Although this was not done as a component of structural reform, the attempt at decentralisation coincided with other market-oriented reform efforts.

## **CRIMINALIZATION OF POLITICS**

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Criminalization of politics is one of the major threats to the Indian democracy. Democracy implies rule of law and holding of free elections to ascertain the will of the people but in last few decades due to criminalization of politics, this very essence of the democracy is lost and the socio-political fabric of our country has greatly been vitiated. Elections in the world's largest democracy have been attracting an ever larger number of criminal elements and this trend is evident across all political parties. It is ironical that while Indian citizens have the power to change their government democratically, they have not been able to stop the criminalization of politics resulting in the erosion of civil liberties. Despite all the agitation of the civil society over this issue, political parties tend to succumb to the temptation of enlisting the support of criminal elements and accord primacy to their "winnability" factor and electoral clout. It's shameful to admit that in the world's largest democracy the cult of the gun prevails; goondas and criminals are hired to capture booths and kill political rivals, etc. and thus, the entire democratic process is negated.

As politics increasingly become agenda less, with winning election itself becoming the sole agenda, politicians started soliciting the help of known outlaws in winning elections with muscle and arms. In the process, a person with criminal antecedents and potentialities came to be regarded as a valuable resource by election managers and criminality an important input for electoral success.

Broadly criminalization of politics would mean, (i) the use of 'money power' and 'muscle power' by politicians, especially during elections, (ii) aiding and abetting crimes and sheltering criminals by politicians in power, if necessary, by interfering in the working of the law enforcement agencies, (iii) politicization of the

administration, particularly the police with the latter obliging politicians in power by permitting interference and sometimes being privy to it, (iv) persons with a record of heinous crimes such as murder, extortion, kidnapping being selected to the state legislatures and parliament, and (v) criminals succeeding in occupying high places of honour and status in governance, say becoming ministries and governors.

The criminalization of politics continues to be a very big concern, with an increase in the number of MPs with criminal records in 2004 from 128 to 150 in 2009 (Table 4.1). Even the number of MPs with serious criminal cases has gone up. The biggest reason for this seems to be the undemocratic and autocratic selection and nomination of candidates by political parties. In order to ensure the win ability of candidates, parties ignored honesty to give preference to muscle power and money power.

Table 4.1: Number of MPs with Criminal Records in 2004 and 2009 LokSabhas

	2004	2009	% increase
MPs with criminal records	128	150	17.2
MPs with serious criminal records	55	72	30.9
MPs with serious criminal charges	302	213	-29.5
Total criminal cases	429	412	-4.0

Amongst the political parties, BJP has maximum MP having criminal cases—42 MP have criminal cases against them, out of which 17 MP have serious criminal cases against them. Congress has 41 MP with criminal cases out of which 12 MP have serious charges against them. SP has 8 MP with criminal cases out of which 7 have serious charges, followed by Shiv Sena which has 8 MP with criminal charges out of which 3 have serious charges (Table 4.2).

Amongst the states, UP has maximum MP with criminal cases (total of 31, out of which 22 MP have serious charges against them). Maharashtra is second with 23 MP having criminal cases

out of which 9 have serious cases against them. It is followed by Bihar, Andhra Pradesh and Gujarat.

The influence of muscle power in Indian politics has been a known fact since the first general elections of 1952 and use of outlaws by politicians to promote their electoral prospects was alleged. However, the intensity and the frequency of such allegations have increased significantly. In fact, we have today reached a stage where criminalization of politics is widely accepted as inevitable.

Table 4.2: Party-wise Number of MPs with Criminal Records in 2009 Lok Sabha

Party	Total MPs	MPs with Criminal Charges	Percentage of MPs with Criminal Charges	MPs with Serious Criminal Charges	Percentage of MPs with Serious Criminal
BJP	116	42	36.21	19	16.38
INC	202	41	20.30	12	5.94
SP	22	8	36.36	7	31.82
SS	11	8	72.73	3	27.27
JD(U)	20	7	35.00	3	15.00
BSP	21	6	28.57	6	28.57
BJD	14	4	28.57	1	7.14
AITC	19	4	21.05	4	21.05
NCP	9	4	44.44	3	33.33
DMK	16	3	18.75	1	6.25
RJD	4	3	75.00	2	50.00
CPM	15	3	20.00	1	6.67
ADM	7	3	42.86	3	42.86
RLD	5	2	40.00	1	20.00
JD(S)	3	2	66.67	1	33.33
TDP	6	2	33.33	1	16.67
JVM	1	1	100.00	0	0.00
VCK	1	1	100.00	1	100.00
AIMI	1	1	100.00	1	100.00
SAD	4	1	25.00	0	0.00
IND	9	1	11.11	0	0.00
JMM	2	1	50.00	1	50.00
TRS	2	1	50.00	0	0.00
AIFB	2	1	50.00	1	50.00
Total	533	150	28.14%	72	13.51%

It was reported in early nineties that there were 30-35 such legislators and two Lok Sabha members in India who, before they became legislators/MPs, used to do their job of stamping ballot papers, looting ballot boxes and capturing booths for their Netas. When the importance of booth capturing became clear on them, they jumped into the electoral fray themselves. Some of them became independent candidates, whereas some others entered the election fray on tickets of political parties (Nav Bharat Times, 1993). These people's policy has been might is right, that is capturing booth with the help of 'danda', stamping ballot papers, making ballot boxes disappear. By doing so and winning election easily, such people entered Vidhan Sabha and Lok Sabha. The last state assembly elections of Bihar, UP, Haryana, Jharkhand, and Andhra Pradesh pointed out towards one obvious trend in Indian politics, i.e., increasing criminalization of politics.

Criminalization of politics started with politicians seeking the assistance of criminals, in particular to fight elections. In the area of criminalization of politics and politicization of crime, criminals needed the politicians' protection against the processes of law and therefore they paid them. Politicians needed huge sums of unaccounted money for political activities, their parties, elections and for themselves. Nobody could pay hard earned, white, tax-paid money to the politicians. Therefore, funds from the crime world come handy. Gradually the politicians became subservient, and a stage came when politicians began seeking not only their help in terms of money but also of muscle power for their own physical protection from rivals. And, finally dons of the crime world themselves entered politics. Thus, persons known to have a criminal past becoming legislators and ministers has not only become common but is being openly defended by leaders of political parties. A stage has now been reached when politicians openly boast of their criminal connections.

Moreover, in the event of conviction and resulting disqualification, with the blessings of their party establishments, such elements are encouraged to pass on their mantle to their wives and progeny. It is a happy indication that many such proxy candidates were defeated in the 2009 Lok Sabha polls. But the fact remains

that despite the best efforts of the Election Commission; the use of muscle power is a harsh reality and significantly influences the voting behaviour and the electoral outcome in many constituencies. A former CM of a renowned state of India passed a comment when media questioned him for having his Cabinet Ministers with serious criminal records, *"I don't bother about the ministers' past. After joining the government, they are not indulging in crimes, and are ready to help suppress criminal activities. Ask the people why they have elected them."* How such a comment will be accepted in the world's largest democracy.

A new culture of acceptance of the criminalization of politics at the highest political levels in the country was born post 1980. Prior to the 1998 general elections, the Election Commission declared that under the Representation of Peoples Act, a person convicted of an offence would be disqualified to contest an election, even if an appeal was pending in court. The stand of the election Commission is legally valid, but it has awakened very late. As it is noted, when the Lok Sabha elections were held in late 1979, Sanjay Gandhi and V. C. Shukla had been convicted by the session judge, Delhi for two years for offences of entering into a criminal conspiracy during the Emergency to destroy the film materials of KissaKursiKa, and of committing various other offences in consequence. Their appeals were pending in the Supreme Court and yet they were allowed to contest election.

Much later, Chandershekhar's attitude was very similar in case of Chandra Swami who was facing prosecution and was under investigation in several cases, including his involvement with BablooSrivastva. The former Prime Minister defended the so called 'god man' saying, "No person should be prosecuted or harassed just because someone is doubting his integrity or leveling all sorts of allegations against him."<sup>267</sup>

Criminal elements and political parties have not looked back since the process started. Political parties have been vying with each other to nominate more and more mafia leaders, history sheeters, and persons charged with grave offences as their candidates in successive elections.

It is the fact that certain criminals have been elected from prisons. Others have been reported holding durbars in jail, with all home comforts, as they instruct their minors by cell phone and rule their empire, issuing diktats that few dare disobey. Some take anticipatory bail to avoid arrest. Others find it easier to abscond while notices for their production in court are pasted on walls, nailed on doors and published and broadcast by the media. And when they are ready, they “surrender”, engaging clever lawyers to argue their case.

It would be recalled that the issue of convicted candidates being allowed to contest elections had come to the fore when Navjot Singh Sidhu, cricketer-turned politician who had been elected to the 14<sup>th</sup> Lok Sabha, was convicted by the Punjab and Haryana High court in December 2006 under section 304 of the IPC and sentenced to imprisonment for three years. Although the law allowed Sidhu to continue as MP during the pendency of his appeal against conviction, he chose to resign on moral grounds and seek re-election from the same constituency. But for contesting an election, he needed a special dispensation and the apex court gave him the desired reprieve by temporarily staying his conviction, enabling him to contest the by-election.

In the recent general elections, a number of candidates with a record of conviction had approached various courts seeking similar exemptions. It is in this context that the Supreme Court’s decision to treat Sidhu’s case as an exception must be celebrated for the simple reason that it would otherwise have opened a Pandora’s Box and encouraged convicted felons of all descriptions to seek greener pastures in various legislatures.

In an earlier landmark judgment delivered on March 13, 2003, the Supreme Court had made it mandatory for all candidates contesting elections to the Parliament and state legislatures to submit, along with their nomination forms, an affidavit disclosing details about their criminal, financial and educational backgrounds. This judgement came as the result of a four year long campaign by several civil society groups for greater transparency and accountability in the electoral processes.

It is not difficult to see why political parties put up criminals as candidates. Given a situation in which the sanctity of elections is being increasingly undermined by rigging and booth-capturing, a criminal with muscle power has greater chances of winning than a clean and decent individual without such 'capabilities'. And most often criminals do win, which is why they are increasingly present in the country's representative institutions. The consequences of the trend, if allowed to continue unchecked, hardly deserve an elaboration and are seen in the increasing criminalization of the process of governance with ministers, legislators, bureaucrats and unscrupulous businessmen combining to plunder public funds and prey on the public.

It is well known that all parties take the help of criminal elements to dominate the election scene in India. But this process is influencing the mind and the will of the people both to gain the majority to rule the country according to their will. The system of democracy is now changing into the dictatorship of some. Because the democracy of India are now in hands of the criminal who are not capable any way to hold the post if legislature.

A statement made in the assembly by a minister of a north Indian state that he patronized and would continue to patronize gangsters to fight and win elections is an indication of the growing phenomenon where criminal background has become a prerequisite to win elections. Despite the countrywide debate generated by the Vohra Committee Report on criminalization of politics, the system has changed only for the worse. Earlier in the 1960's, the criminal was content helping (covertly) the politician win the election so he could in turn get protection from him. The roles have now been reversed. It is now the politician, who seeks protection from criminals. The latter seek direct access to power and hence become legislators or ministers.

The Election Commission's observation that nearly 40 members of the 11<sup>th</sup> Lok Sabha and 700 members of the state assemblies had a criminal past proves this. The Election Commission's requirement that the prospective candidates file an affidavit listing the criminal charges they face has hardly made any dent in the growing criminalization of politics. Some radical reforms in the existing law need to be undertaken urgently. Until this is done, political parties could take some

initiative to curb this trend, by denying tickets to politicians with a criminal background. Far from it, party leaders invariably issue tickets to those with a criminal past because they cannot only win elections, but also help other candidates win. The Election Commission is powerless in preventing criminals from contesting elections. The Representation of People Act allows it to debar candidates convicted of certain crimes, but cannot prevent those under trial or whose appeals from their earlier convictions are pending for disposal before the higher court for multiple murders or rape or corruption or theft from the public exchequer from representing the people in the country's highest legislative forums. There have been a number of cases where persons under trial have contested elections, while in jail and won. Unfortunately, no political party has taken any concrete step to curb this malpractice.

Lately, the Election Commission of India has taken noticeable measures to check criminalization of politics. It has already banned convicted people from contesting elections to the state legislature or parliament, at the same time; it has asked all criminally-charged persons to disclose all the charges they face, in the nomination paper. This information will be easily made available to the public. Cases pending against politicians should be settled as quickly as possible. It is found that cases against them remain pending for long and they keep winning elections while the cases remain pending. Later, with their ministerial power, they manipulate the cases in their favour. Withdrawal of criminal charges against some tainted ministers of the present government is a case in point.

Thus what we are facing today is not only criminalisation of politics, but what is a more sinister development, politicization of criminals.

**CANKER OF CRIMINALIZATION OF POLITICS:**

**CRIMINALIZATION OF POLITICS- CAN IT BE STOPPED....** Is there a way out?

Among the Indian intelligentsia, the increasing Criminalization of politics has become an issue of prime concern. It is the high time for the custodians of democracy in India- its common man- to pressurize the political parties to stop giving tickets to candidates with tainted records so that the politics will not become a piece of cake for criminals.

The Campaign for NO CRIMINALS in Politics:

Let's have a campaign for "No criminals" in Politics; not only in India alone but in the whole south Asia. If we want to save the democratic institutions of any country then there has be a criminal's free politics. Let's join hands together to save our legislative and executive bodies from the wounds of any society - Criminals Cum Politicians. I am very optimistic that we will be able to manipulate this problem very soon.

The Government and law enforcing authorities remained helpless in the face of this muscle-power and gangsterism unlimited. To-day a number of Chief Minister have close links with criminals, a large number of MPs and MLAs are men with criminal records. Criminals have infiltrated into Indian socio-political life and future of Indian democracy seems to be bleak. Gun-looting goondas and gangsters move about merrily eliminating their political opponents and creating terror, and nobody seems to fear much for this show of naked and unabashed violence. It seems that nobody has the means or the will to put down such nefarious activities with an iron hand.

Criminalization of Indian politics and the consequent cult of the gun is the greatest danger that faces Indian democracy to-day. Leaders of all political parties and intellectuals deliver eloquent speeches expressing their abhorrence at the infiltration of criminals into the electoral arena. Stress is laid on eliminating the use of muscle power in the electoral process. Yet, the majority of the parties remain satisfied with expressing such pious sentiments. In any case there is no inhibition in securing the services of musclemen and anti-social elements in order to ensure success at the hustings. Quite often the plea put forward for this purpose is that it is a defensive measure to off-set and resists the doings of the anti-social elements engaged by the rival candidates. The malady has gone deep into our body politic and unless we can deal with it with a firm hand in ruthless manner, the danger is

that the electoral process would pass into the hands of anti-social elements and thus slide down and degenerate into a farce.

The entry of criminals into the political arena has caused havoc in the sphere of the administration of criminals' justice. The likelihood of injustice in a democracy is supposed to be much less than under systems where civil liberties are suppressed and there is absence of democratic norms. There is thus a close relationship between democracy and rule of law. These two along with liberty, are indeed considered to be the three faces of the supreme trinity which presides over the destiny of all liberal societies. Each one of them is vital for the survival of the other two, for the negation of one would prove fatal for the other two.

Democracy needs restraints and a willingness to abide by a code of self-discipline. It has been recognized that even though man be only a little lower than angels, he has not shed the brute within him. The murderer lurks not far beneath to break out from time to time. To curb and control the brute within man and to prevent the degeneration of society into a state "red with tooth and claw", we need the rule of law and a suitable agency to enforce it. Such an agency is furnished by the Courts. Criminal law is, therefore, looked upon as the most effective weapon of social defense.

Despite all the professed abhorrence for the use of muscle power in the course of elections, a large number of politicians take its aid. It may be that some make unabashed use of it with a view to intimidate voters for securing their votes, while many others take the help of muscle power as a defensive strategy against the muscle power of rival candidates. The result is that the use of muscle power has become a regular feature of the electoral process. The intellectuals may decry this practice, the newspapers may carry long articles in condemnation of it, the public spirited persons may describe it as a negation of free and fair elections but the fact remains that the vice exists and one cannot run away from harsh reality. Large scale violence in a number of constituencies during the elections to the Lok Sabha and various assemblies is a grim reminder of the existence of this malady in the politic body.

It is also a fact that the bigger a Goonda is; the greater is considered to be his usefulness and value during the course of elections. So the politicians take the help of such antisocial elements while contesting the elections. The electoral process thus leads to close links between the anti-social elements and the politicians. The consequence is that when the anti-social elements get into trouble with the law enforcement agencies they invariably look to politicians to extricate them out of their difficulties. The politicians on their part find it difficult to resist the demands of the criminals to whom they are indebted. In fact the help rendered by politicians to anti-social elements, when the latter are in difficulty is a kind of return for the support given by the anti-social elements to the politicians at the time of elections.

The close links of the anti-social elements with the local politicians act as a deterring factor for the law enforcement agencies from proceeding and taking strong action against them. During recent years, however, we have come across action a new strategy being adopted by such anti-social elements. Many of them are swayed with the idea that if their grip over substantial sections of the electorate by erosion and intimidation or otherwise, and their capacity for booth-capturing and rigging or use of other unfair means, at pistol and dagger points can ensure the election of others, why should they not use that grip or capacity for ensuring their own election as member of the legislatures?

According to newspaper reports about 100 elected members in a State legislature during the last five years had criminal history-sheets. We can well imagine the fear of policemen while dealing with such elements. Many policemen in these circumstances consider “discretion to be the better part of valour” and turn a blind eye to their nefarious acts. Experience also tells us that once a person gets elected to a legislature the election secures for him not only some kind of reprieve from legal process for his past activities, but also affords him virtual immunity from further proceedings against him for breach of criminal law. It is no doubt true that this is not legally permissible and the law does not countenance such a state of affairs, but ways are always found to circumvent the law.

There is rampant interference in the course of investigation of criminal acts of local politicians. That there is such interference is a harsh reality which cannot be denied. There can also be no doubt that unless there are efficient investigation

resulting in the collection of credible evidence, the prospect of securing the conviction of the accused culprits as a result of judicial trial, becomes extremely remote. This has led to a situation of increased incidence of acquittals in major criminal cases involving M.P.s and M.L.A.s and even ministers

Once the impression prevails that it is difficult to secure the conviction of an accused in a court of law, the victim of the offence or their close relatives, look to extra-legal methods to settle score with the culprits. Such a situation means a collapse of criminal justice and these results in a state of chaos and anarchy. The effectiveness and potency of the administration of criminal justice can be ensured only if we can eliminate, or at least minimize, political and other extraneous interference in the investigation of crimes.

All right minded citizens should put their head together to find out ways and means of saving Indian democracy from this menace. If criminals continue to flourish without any check and carry on their activities no body's life, property and honour would be safe. Indian democracy must be saved from the prominence of criminals and all the evil that it implies. Under no circumstance should law be taken into one's own hands. However, in this respect the rules of the country themselves are not free from blame, for they have been guilty of inciting the people to take recourse to violence.

Not only the new government must tackle these issues on a priority basis and include them in their agenda but it's very important on people's part to be aware of not voting for the wrong person and be a part of '***No to Criminals in Politics***'